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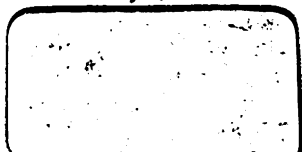
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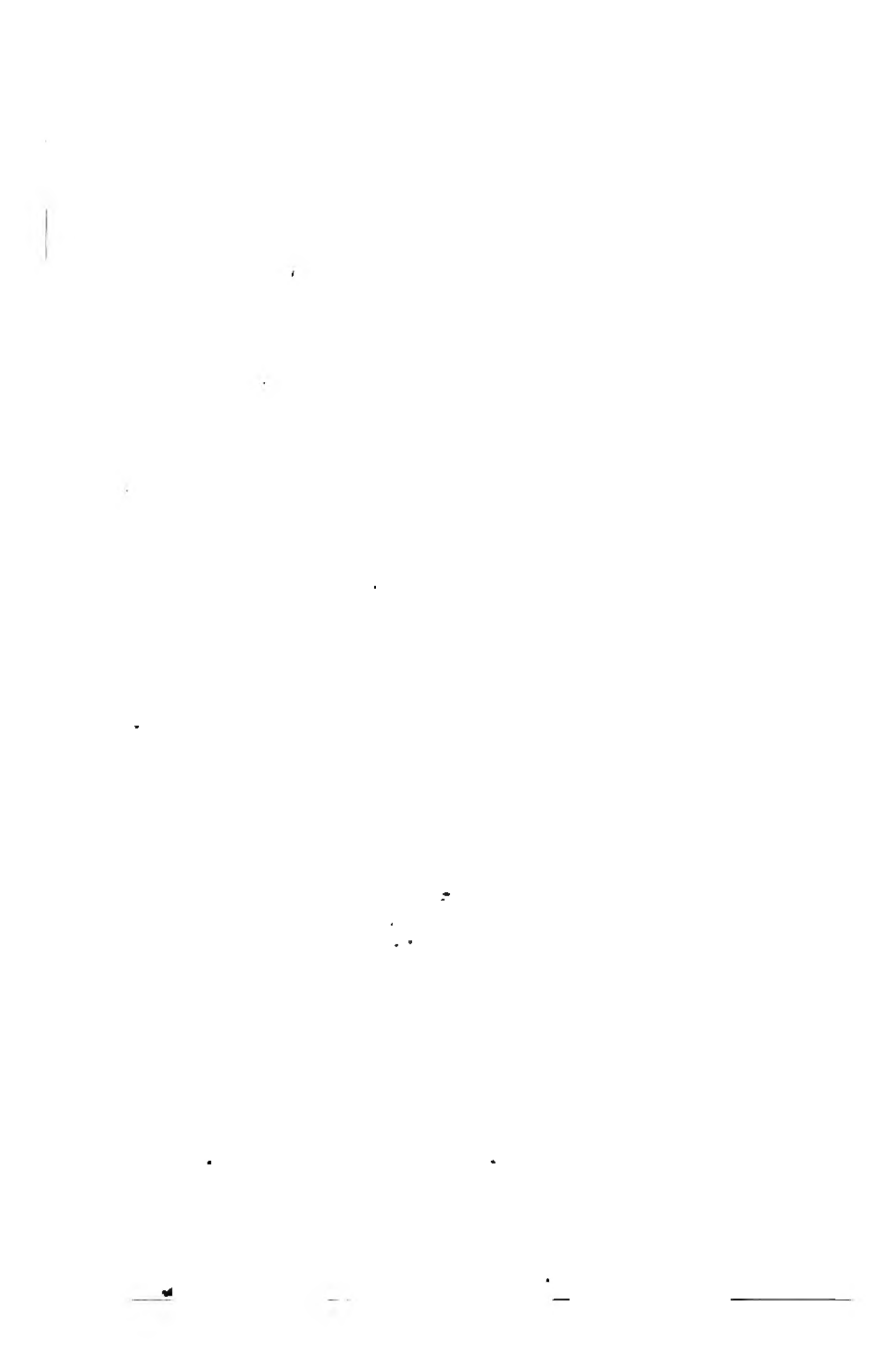
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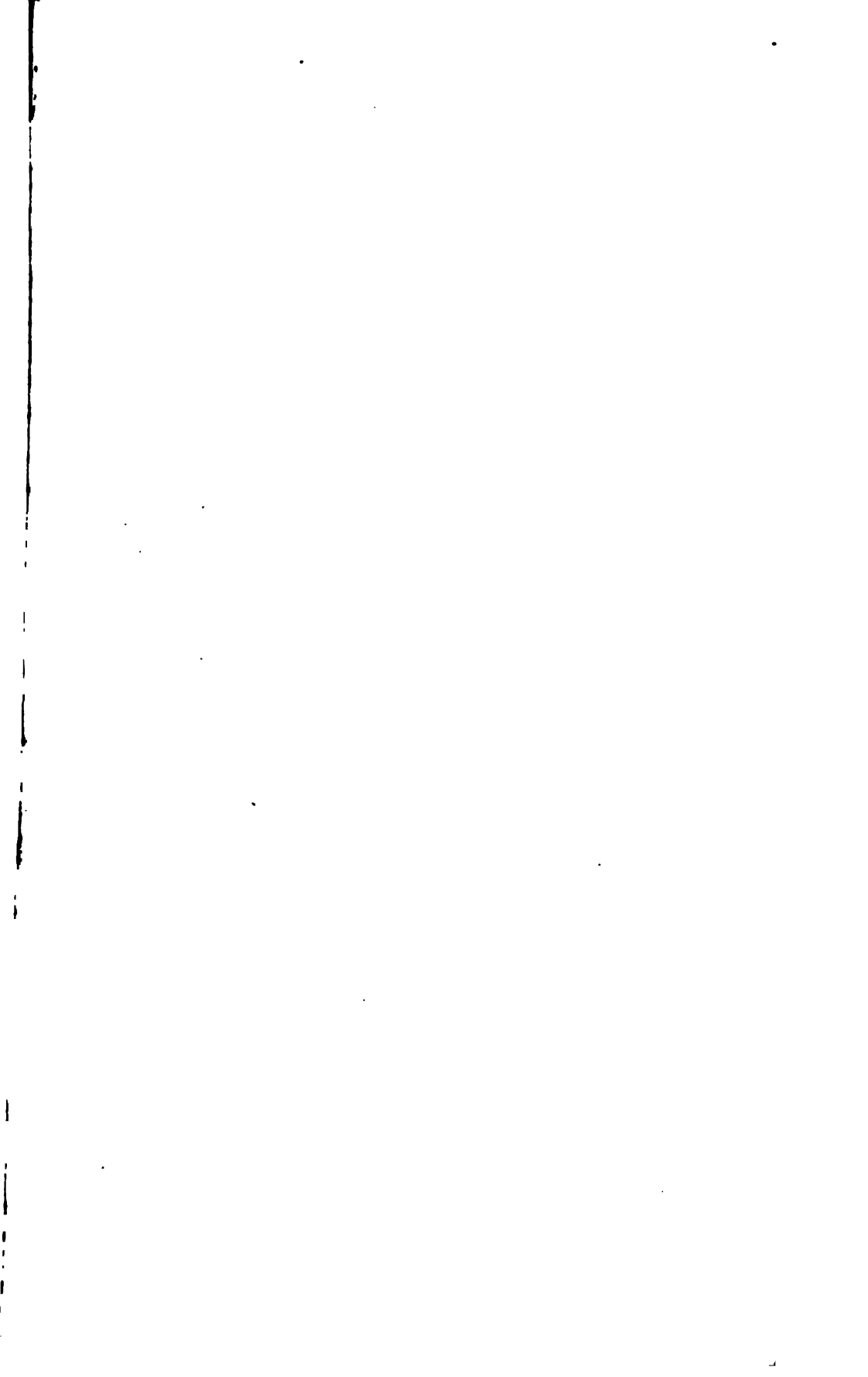
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CLIFFORD AND RICKARDS'S *LOCUS STANDI* REPORTS.

2000
VOL. I., PART I.

CASES

DECIDED DURING THE SESSIONS, 1873-4-5,

BY THE

COURT OF REFEREES

ON

Private Bills in Parliament. 2/

BY

FREDERICK CLIFFORD & A. G. RICKARDS,

BARRISTERS-AT-LAW.

LONDON:

BUTTERWORTH & CO., 7, FLEET STREET,

Law Publishers to the Queen's Most Excellent Majesty;

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1876.

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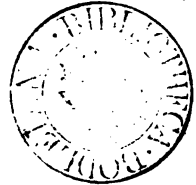
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P R E F A C E.

THE Reports now issued include Cases decided by the Court of Referees in Parliament during the Sessions 1873-4-5, and form PART I., Vol. I., of a New Series, in continuation of the Reports of "Clifford & Stephens." Owing to the pressure of professional business, Mr. Pembroke S. Stephens retires from further connection with the Reports, but has been kind enough to assist in the revision of the proofs during the progress of the work through the Press. His place has been taken by Mr. A. G. Rickards.

Some of the decided Cases, which depended mainly upon questions of competition, construction of agreements, or other special circumstances, and involved no definite principle, have been omitted from the Reports.

For convenience of reference, the Cases of each year are arranged in alphabetical order, and therefore an index of Cases is unnecessary. In other respects, the Reports follow the arrangement of the First Series.

An Index of Subjects is appended. Part II., completing Vol. I., will contain the Reports of 1876, with a complete Index to the volume.

Vols. I.-II. of "Clifford & Stephens" contain a Treatise on the Practice of the Court of Referees ; with Reports of Cases heard during the six Sessions from 1867 down to 1872. Including the present Volume, the Reports furnish a Record, practically complete, of the Decisions of the Court since the commencement of the Session of 1867.

TEMPLE, *March*, 1876.

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COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1873.

. Where a Standing Order is quoted or referred to, the numbering is that of the Standing Orders for the Session 1876.

ALLOA JUNCTION RAILWAY BILL.

Petition of the **MAGISTRATES and TOWN COUNCIL OF STIRLING.**

12th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Railway—Bridge—Rates on Shipping—Navigation—Apprehended obstruction to—Representation—Royal Burghs, Scotland—Town Council—Distinct Interests.

A railway bill, which provided for the construction of a bridge across the Forth, was opposed by the provost, magistrates, and town council of Stirling, on the ground that the bridge would obstruct the navigation, and thereby (1) diminish rates and dues to which the petitioners had a statutory right, and (2) injuriously affect the interests of the inhabitants of Stirling, a Royal burgh. The Forth navigation commission also opposed the bill, and their *locus standi* was not objected to; but it was contended that this body adequately represented the petitioners, who formed a majority of 21 out of 27 of its members:

Held, that the petitioners, being charged with the general interests of the burgh and entitled also to a share of the tolls, had an interest distinct from that of the commissioners, and entitling them to appear separately against the bill.

The bill provided for the construction of a railway five miles long, crossing the Forth. The petitioners alleged that, in virtue of their charters, the provost, magistrates, and town council of Stirling were entitled to certain rates and dues on shipping frequenting the shore or quay of Stirling, and on goods imported or exported. Under an Act passed in 1843, commissioners were appointed to improve and regulate the navigation of the Forth between Alloa and Stirling, and the petitioners (section 125) agreed to give up to these commissioners the then existing rates and dues, the commissioners paying, in return, to the petitioners, one-seventh of the rates to be levied under the Act. Neither the petitioners nor their predecessors had required payment of this one-seventh, as they desired that the whole funds of the commissioners should be expended on the improvement of the navigation, but they reserved their right under the Act. The petitioners contended that the proposed railway bridge would be such an obstruction as entirely to close the navigation of the river between Alloa and Stirling, and as no vessels would come to Stirling, no dues would be leviable, and the petitioners' interests would be injuriously affected. The petitioners also objected to the construction of the bridge on behalf of the community of Stirling generally.

The *locus standi* of the petitioners was objected to, because (1) their rights, property, and interests are not taken, or affected by the bill; (2) any interest they may have in rates or dues on vessels and goods is represented by the Forth navigation commissioners, who petition against the bill; (3) the petitioners are not entitled according to practice.

MacLaurin, Parliamentary Agent (for petitioners): The Forth navigation commission, besides the provost, magistrates, and town council of Stirling, comprises two commissioners of supply for each of the counties of Stirling, Perth, and Clackmannan, and is therefore an entirely different body, with possibly different interests from those of the town council.

Our statutory right to one-seventh of the rates leviable under the Act of 1843 will be injuriously affected by any obstruction to the navigation; and we are also entitled to a *locus standi* against the bill as representatives of a Royal burgh; our petition contains a distinct allegation of injury to the interests of the community. (Case of the *Royal Burghs*, Smeth. 182; Cliff. & Steph. 84, *text*.) The *North Eastern Railway Bill* (2 Cliff. & Steph. 147) is also in point.

Leslie, Parliamentary Agent (for promoters): Of the navigation commission 21 out of 27 are members of the corporation of Stirling, who thus command a dominant majority. The *locus standi* of the navigation commissioners is not objected to; the petitioners are represented by them; they raise the whole issue arising from apprehended obstruction to the navigation; and it is only through interference with the navigation that any injury can arise to the burgh. The interest of Stirling is insignificant, for only 16 vessels went up the Forth above Alloa during the whole of last year. The case of the petitioners and of the navigation commission is practically identical.

MR. RICKARDS: The commissioners are not guardians of the interests of the burgh; their duty is to protect the navigation.

Leslie: As the petitioners form so large a majority of the commission, they will be able to protect the interests of the burgh as members of that commission, when appearing on a separate petition. In the *North Eastern Railway* case, there was nothing like the representation which exists here.

Locus standi Allowed.

Agents for Petitioners, *Loch & MacLaurin*.

Agents for Bill, *Martin & Leslie*.

AYR BURGH BILL.

Petition of MINISTERS and KIRK SESSION OF Ayr.

31st March, 1878.—(Before the Chairman of Ways and Means; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Town Council—Trustees—Extension of Municipal Boundary—New Constituency—Change in Trust Body, resulting from—Ministers and Kirk Session—Trust Funds, Administration of—"The Common Good"—Account asked by Beneficiaries.

By a charter of Queen Mary the corporation of Ayr were made trustees of certain property for the benefit of ministers and other ecclesiastical officers in the burgh. The corporation now promoted a bill for extending the municipal limits of the burgh.

The bill was opposed by ministers and Kirk Session of Ayr on two grounds, (1) that the enlargement of the constituency would vest the trust property in a new body of trustees, some of whom might not even be parishioners of Ayr; and (2) that the bill would perpetuate the mixing-up of the trust funds with the general corporate fund, whereas the petitioners contended that the trust funds should be dealt with separately:

Held, (1) that the increase of the constituent body was not such an alteration of the trust as entitled the petitioners to be heard; and (2) that as the bill proposed no change in the objects or administration of the trust funds, the rights of the petitioners were not adversely affected, and they had no *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no property of theirs is interfered with; (2 and 8) they have no right to be heard as to who should be the constituents by whom the town council are elected or the magistrates chosen; (4 and 5) the provost, bailies, and councillors of Ayr are the sole trustees under the charter of Queen Mary, and the petitioners have no special interest entitling them to call the corporation to account respecting the administration of the trust; (6) the Bill makes no change in the administration of the trust, the application of its revenue, or the accountability of the corporation as trustees to any competent tribunal; (7 and 8) the petitioners are not entitled to object to the extension of the municipal boundary on the part of inhabitants, and cannot be heard according to practice.

Shiress Will (for petitioners): Under the charter the corporation are bound to apply the trust funds "with the advice" of the beneficiaries, namely, the ministers and elders of the burgh. They are also bound to keep these funds separate, instead of treating them as part of the Common Good, and expending them promiscuously with the ordinary income of the burgh.

MR. RICKARDS: Your petition does not appear to complain of what is in the bill, but rather that something is absent which it ought to contain.

Will: The bill will wipe out the existing trust body and vest the whole funds of the borough, including the trust property, in new trustees, elected by a new and enlarged constituency. This change of our trustees gives us a technical right to a *locus standi*. The bill will also legalise the existing mode of administering the trust funds. We ought not to be driven to the court of session for a remedy. Unless we are allowed to be heard nobody can be heard, the trustees being the promoters of the bill. We do not go upon the ground of patronage and seatments mentioned in the petition.

Mundell, Q.C. (for promoters): Admitting, for argument sake, that *cestui que* trusts can come to Parliament, with a view to obtain an account, I say that the right parties are not before the Court. The Kirk Session are not the beneficiaries under the charter. They are a *quasi* corporation who administer the discipline of the church, but they are not mentioned in the charter. The beneficiaries mentioned in the charter are the ministers and other ecclesiastical persons in the burgh; and the advice of the ministers and elders is only to be taken upon one point—the building and improvement of hospitals. Under the Police Act, Scotland, we could make the municipal boundary co-extensive with the Parliamentary boundary, but we could not conveniently divide it into wards, as proposed under the bill. We enlarge the corporation; we do not make a new one. The ancient corporation remains the same, though fresh constituent elements will be introduced; and we shall be bound to administer the trust property as it has been administered heretofore. The fact that non-parishioners will be admitted to the constituent body makes no difference if the trust property remains subject, as it will, to the same trusts and uses, and will be administered exactly as before. The bill is really one for an account. If they have any case on this ground the remedy of the petitioners is in the court of session.

Locus standi Disallowed.

Agents for Bill, *Grahames & Wardlaw.*

Agents for Petitioners, *Loch & MacLaurin.*

BIRKENHEAD, CHESTER, AND NORTH WALES RAILWAY BILL.

Petition (1) C. F. C. DAVIS, ELIZABETH FLUITT, and OTHERS.

2nd April, 1873.—(Before Mr. ADAIR, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Appear, right to, defined—Qualification—Solicitor—Parliamentary Agents, Roll of. Railway—Bridge across River—Millowners' rights of—User of Water—Tidal flow—Interference with, by Railway Bridge—Public Improvement, private rights affected by.

A solicitor, who does not appear on his own petition, must sign the roll of Parliamentary Agents before he can be heard by the Referees.

A railway company proposed to construct a bridge across the Dee. Certain millowners whose mills were situated on the river, between 8 and 9 miles above the proposed bridge, opposed the bill on the ground that

the bridge would interfere with the tidal flow, and the working of the mills would thereby be injuriously affected. It was objected by promoters that the right of millowners, under the S. O., to be heard against the abstraction of water by a water company, should not be extended to a bill under which there would be no abstraction of water, and which merely contemplated a public improvement:

Held, that, as the mills appeared to be dependent upon the tide for a portion of their water supply, and as the bridge would obstruct the tideway, there was such a case of interference with private rights as entitled the petitioners to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their property will not be taken, or interfered with; (2) their mills are situate many miles from the point where the railway will cross the Dee and cannot be injured by the bridge; (3) the river Dee commissioners are the proper parties to complain of any apprehended obstruction of the navigation or interference with the flow of water; (4) the petitioners cannot be heard consistently with practice.

Boydell, solicitor, appeared for petitioners; but

Sargood, Serjt. (for promoters) objected that he had no right to be heard, not being on the roll of Parliamentary Agents. Mr. Boydell might appear if he undertook to sign the roll afterwards.

The CHAIRMAN: That would be an *ex post facto* qualification, which the Court are not inclined to recognise. The practice of the Court is to hear only parties, counsel, and Parliamentary Agents. Mr. Rea, a solicitor of Belfast, was heard, not being a Parliamentary Agent (2 Cliff. & Steph. 75), but it was on his own petition.

Boydell (having retired and signed the roll): The petitioners are owners or lessees of the Dee mills at Chester, and are entitled to the user of the water of the river, under a grant from the Crown (*temp. Edward II.*). The proposed railway bridge, with its four piers, will prejudicially interfere with the flow of water, and the flux and reflux of the tide, and will thus seriously affect our right of user. The mills are largely dependent on the tide; in dry seasons the water would not suffice to work the mills but for the tide; and the least interference with the tide-way may thus injure our property. The *Maryport Improvement Bill* (Smeth. 105) is a case in point. The site of the proposed bridge is at a distance of between 8 and 9 miles from the mills, but the fall of water between the two points is not more than 6 feet, so that the least interruption would stop the mills. Our only source of supply is the river, the supply being kept up and regulated by means of a dam; but this equal and regular supply would be prevented by interference with the bed of the river,

and, in such an event, the Lands' Clauses Act would not help us.

Sargood (in reply): The S. O. require that millowners, whose mills are within 20 miles of the point of interference, shall be served with notice of any proposed interference with the stream, but there is no precedent for the *locus standi* of millowners against a bill which proposes not to abstract water, but merely to carry a bridge across the river. The Dee conservancy board are the proper persons to protect the bed of the river and the navigation.

Mr. RICKARDS: They would represent the public; but this is an allegation of injury to private rights and private property.

Sargood: The petitioners may have a right to use the water of the river, but they cannot have such an inherent right in the water as entitles them to be heard against a public improvement.

Mr. RICKARDS: If you threaten to take a man's bread away by a public improvement, he is entitled to be heard against it.

Sargood: Surely, the petitioners have no right to control the flux and reflux of the tide in order that they may use the water; to oppose a public improvement because it may possibly obstruct the tideway; and require that the tide shall be adapted to the convenience of these mills in all time to come.

Mr. RICKARDS: The petitioners want to maintain the *status quo*.

Locus standi Allowed.

Agents for Petitioners, Dean & Taylor.

Petition of (2) OWNERS, LESSEES, and OCCUPIERS ON THE LINE OF PROPOSED RAILWAY.

Practice—Petition, sufficiency of—Signatures—Owners, Lessees, and Occupiers, Description of—Residence—Petitioners, Identification of—Identical signatures in Petition—Usage of Parliament, as to signatures—Book of Reference—S. O. 131.

Against a bill to authorise the construction of 17 short lines of railway in Wales, 30 persons petitioned, alleging that they were owners, lessees, or occupiers upon the line of the intended railways, and objecting to compulsory powers over their property. It appeared that most of the signatures were without addresses or description, and that some common names occurred twice, both in the petition and book of reference. The promoters asked that these names should be struck out of the petition, for want of sufficient means of identification:

Held, however, that according to the usage of

Parliament, signatures to petitions need not be accompanied by any description or residence; and objection over-ruled.

The bill was one to authorise the construction of 17 short lines of railway. The petition was headed, "The humble petition of the undersigned owners, lessees, and occupiers of property on the line of the proposed railway;" and they alleged that they were "respectively owners, lessees, or occupiers of land, houses or other property on the line of the said intended railways, or within the limits of deviation delineated on the plan thereof, whose property it appears by the said bill and by the plans and sections therein referred to is intended to be or may be taken, used, or otherwise interfered with for the purposes of the said bill, and your petitioners object thereto and to the compulsory powers over their lands and property." The petitioners were 30 in number.

The *locus standi* of the petitioners was objected to on the following grounds:—"The petition purports to be that of owners, lessees, and occupiers of property on the line of the proposed railway, and bears numerous signatures, but does not state where the several properties of the petitioners are situate. No addresses of the petitioners, except in one or two instances, are given, and in some cases divers persons bearing the same names occur in the book of reference, and none of the petitioners are distinguished as owners, lessees, or occupiers. It is, therefore, impossible for the promoters of the bill to ascertain who the petitioners are, or whether or not they are really owners, lessees, and occupiers as stated, nor where their several properties are situate, nor in which capacity they respectively sign the petition, nor to deal with or answer the case set up by the petition upon the information therein set forth, and the petitioners are not therefore entitled to be heard against the bill according to the rules and practice of the House of Commons."

Round (for petitioners): Most of these petitioners have received notice as landowners, &c., under S. O. 20.

Sargood, Serjt. (for promoters): Only 7 are so described in the petition as to be well identified.

Mr. RICKARDS: You assume that it is necessary for a petitioner to describe himself.

Sargood: That is the point I wish to raise—whether, in the words of S. O. 131, the petition here has been "prepared and signed in strict conformity with the rules and orders of this House." Is this condition satisfied when you find at the foot of a petition a batch of names, without any residence, or any description, or any reference to the number in the book of reference? If so, there might be three or four Thomas Jones's, and the promoters might have no idea who they were.

The CHAIRMAN: You object to members of the large families of Evans and Jones unless identified by residence and description?

Sargood: Yes. I have no objection to allow the *locus standi* of all the petitioners, the parti-

culars and situation of whose property are supplied to us within a week.

Round: I object to any such limitation of right. Either we have the right or we have it not. If we have the right any limitation would be improper.

Mr. RICKARDS: By the practice of the House of Commons no description or residence is necessary in the case of signatures to petitions. The name alone is enough. We cannot therefore say there is any insufficiency in the signatures here.

The *CHAIRMAN:* The difficulty here is complicated, because there are 17 railways, and you may have several owners, lessees, or occupiers of the same name on more than one railway.

Sargood: Yes. For example, there are several Thomas Jones's on railway No. 14 and on railway No. 15.

Round: The difficulty arises from the fact that the promoters have chosen to split up their scheme into several different railways.

Sargood (in reply): Suppose there are a dozen Thomas Jones's on the different lines, and a petition is lodged signed "Thomas Jones." How are we to know whether the petitioner is the man on line No. 1, No. 2, or No. 3? I submit that the *locus standi* should be disallowed of all petitioners whose names occur twice over on the face of the petition, or where similar names occur twice or oftener in the book of reference.

Locus standi Allowed.

Agents for Petitioners, *Martin & Leslie.*

Agents for Bill, *Wyatt & Co.*

BURLEY LOCAL BOARD BILL.

Petition of the CORPORATION OF LEEDS.

10th March, 1873.—(Before *Mr. ADAIR, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Waterworks—Local Board—Corporation—Sewerage—Pollution of River—Water, increased Volume of, Passing through Sewers—Nuisance Apprehended—Purity of Water Supply, Endangered—Public Health Acts.

The local board of Burley promoted a bill enabling them to increase their water supply. The sewerage of the town of Burley was already discharged into the river Wharfe, and no additional powers respecting drainage were now proposed. But the bill was opposed by the corporation of Leeds, whose waterworks were situated on the river 5 or 6 miles below Burley, upon the ground that an increased supply of water to Burley would result in the discharge of an increased quantity of offensive

matter into the river, thus lessening the purity of the water, which was the principal source of supply for the population of Leeds:

Held, that the petitioners were not entitled to appear, as, upon the face of the bill, the only change would be an increased volume of water flowing through the sewers, and, therefore, a dilution of the sewage matter now discharged into the river at Burley.

The *locus standi* of the petitioners was objected to, because (1) the bill gives no power to abstract any water from their waterworks, or to interfere with any of their property, rights, &c.; (2) the sewerage and drainage of the promoters' district is now discharged into the river Wharfe, and the bill does not give power to discharge into that river the sewerage or drainage from any other district or place; (3) the effect of the bill is not to increase the quantity of impure water discharged as sewerage or drainage into the river, but to discharge the same sewerage and drainage in a more diluted form, and the bill does not inflict any new or increased injury upon the petitioners; (4) the petitioners do not show any such interest as entitles them to be heard according to practice.

Denison, Q.C. (for petitioners): The bill will give Burley a greater quantity of water, which will be used for carrying sewage into the river. The sewage matter will also be increased. At present, Burley has a number of cesspools, all of which will probably be abolished under the powers of the Public Health Acts, and thus, by means of the new water supply, much sewage matter, at present confined to Burley, will find its way into the Wharfe. Our waterworks are situate 5 or 6 miles below Burley, and our Act authorises the corporation to proceed by injunction in equity or by indictment, "against any person disturbing or injuring the water of the Wharfe or the tributary springs flowing into the same." Here is a recognition of our right to the water in a pure state, for the supply of 300,000 people; and we seek to go before the committee to urge that the Burley local board, whose right to take the water we admit, shall not be allowed to pour the water back into the Wharfe without clearing it by methods well known. The bill itself says that the population of Burley is increasing, and it follows that the sewage discharged into the Wharfe will increase.

Mr. RICKARDS: It will increase with or without the bill.

Denison: Much more with than without the bill. The supply of water will be increased under the bill; an increased supply of clean water will bring more dirty water into the Wharfe; and an increasing population will tend still further to increase the quantity.

Michael (for promoters): There will be a larger volume of water under the bill, but so much the better for Leeds, because the bill does not authorise the local board of Burley to send

an additional ounce of sewage into the Wharfe, and thus the effect will be to dilute the offensive matter already flowing into the river. The bill simply starts with the existing state of things. Under all the general Acts passed from 1847, the Towns' Improvement Acts, down to the Public Health Act of 1872, the local board are bound so to carry out their sewage works as not to create a nuisance, and otherwise are liable to an indictment, or injunction. The argument that the sewage of Burley will increase *pari passu* with the volume of water is not founded on anything that appears in the bill, which does not authorise the construction of a single drain or sewer. The *Tynemouth Gas Bill* (1 Cliff. & Steph. 60) is in point.

Locus standi Disallowed.

Agents for Petitioners, *Simson & Wakeford.*

Agents for Bill, *Sherwood & Co.*

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of the LONDON AND NORTH WESTERN RAILWAY COMPANY.

19th March, 1878.—(*Before Mr. ADAIR, M.P., Chairman; Sir J. P. St. AUBYN, M.P.; and Mr. RICKARDS.*)

Railway—New Lines—Improved Communication—Alternative Route—Running Powers—Traffic facilities—Through Communication—Statutory rights of Railway Companies, for public advantage—Competition.

The Caledonian railway company, by an omnibus bill, proposed to construct a new and duplicate line on a part of the through route between Carlisle and Glasgow. The North Western company, to whom, in 1865, running powers over this through route were granted by Parliament, expressly in the public interest, now desired to be heard for the purpose of claiming similar powers over the new line, alleging that otherwise their traffic would be placed at a disadvantage by being sent along the old instead of the improved route:

Held, that the petitioners had a *locus standi* on this ground (limited to the line in question) even though, as the promoters contended, the statutory powers and facilities conferred upon the North Western company, by the Act of 1865, would remain unaffected and unimpaired under the bill.

The *locus standi* of the petitioners was objected to, because (1 and 2) their railways do not extend further north than Carlisle, and no part of the railways referred to in the petition will be within 80 miles of Carlisle; (3 and 4) their running and user powers, traffic facilities, and privileges, over certain of the existing railways of the promoters, do not entitle the petitioners to be heard against an application by the promoters to construct new railways, and do not entitle the petitioners to claim similar or any powers, facilities, &c., over such railways; (5) the petition does not allege that the bill will enable the promoters to compete with the petitioners; and the petitioners are not entitled to be heard to claim any powers over any existing or proposed railways of the promoters (who are not seeking any powers of the nature of amalgamation) for the purpose of aiding the petitioners in competing with other parties.

Rodwell, Q.C. (for petitioners): The preamble of the Act of 1865 for the amalgamation of the Scottish Central and the Caledonian railways, recites that it would be of public advantage "that the several railway companies owning lines of communication between the metropolis and Scotland, should have running powers over certain portions of their respective systems;" and clause 71 accordingly gives running powers to the North Western and Midland companies, "over the lines of the company, lying between the citadel station at Carlisle on the one hand, and the company's stations at the Lothian Road in Edinburgh, at Buchanan Street in Glasgow, at Perth and at Dundee respectively." New lines are now proposed, with a view not to extend the Caledonian system, but to shorten it for the purposes of through traffic. The result will be to substitute the new line for the old one; and if the Caledonian traffic is so shifted, we want to ask on behalf of the public for the same rights over the new line as were given us in 1865 over the old line.

Mr. RICKARDS: You want to make "the covenant run" with the new line?

Rodwell: Yes. If these lines had been part of the Caledonian system in 1865, there can be no question that running powers over them would have been given us; whereas if we do not appear before the Committee the public travelling from London to Scotland will now be debarred from the use of the best line, and be condemned for all time to come to use an inferior line of through communication; our traffic will no longer possess what the Legislature intended we should have in 1865, namely, as good a service for our trains from Carlisle to the north as the Caledonian company could give us. The following cases are in my favour:—*Caledonian and Glasgow and South Western Bill* (1 Cliff. & Steph 79); *Great Western Railway Bill* (Ib. 80); and *Llantrissant and Taff Vale Junction* (Smeth. 145). The rights of the London and North Western company have been recognised in a very special manner by Parliament in this case, but the benefits secured to us, in the public interest, by the Act of 1865, will be seriously prejudiced if these lines are sanctioned behind our backs, and if our traffic is thus compelled to go by the longer route.

Pember (for promoters): The legitimate deduction from Mr. Rodwell's argument is that if Parliament has seen fit at a definite period and for a definite reason to give running powers to company B over the lines of company A, and if company A at any time afterwards comes to Parliament for any improvement of its own system for its own purposes, company B has a right to ask to have the running powers extended to the improved system.

Mr. RICKARDS: The question is, whether we are to read section 71, "the lines of the company," as they existed at the time of the passing of the Act of 1865, or the lines of the company for the time being, north of Carlisle.

The CHAIRMAN: Then, also, you must consider how far the section supports the avowed object of the preamble which is to afford a direct and rapid communication between London and Scotland.

Pember: The whole question is whether the lines now proposed are portions of the Caledonian and Scottish central system over which Parliament thought it would be for the public advantage that the North Western should have running powers as the price of the amalgamation.

Mr. RICKARDS: Not only as the price of the amalgamation, but as the condition of the amalgamation, in order to mitigate any evils which the public might sustain through the amalgamation.

Pember: Whatever facilities were given to the petitioners by Parliament, as the condition of the amalgamation in 1865, they will enjoy, unimpaired, if these lines are sanctioned. The powers and privileges then obtained by the petitioners will remain intact, and they cannot claim more. (*Crystal Palace and South London, &c., Bill*, 1 Cliff. & Steph. 117.) The word "lines," in the Act of 1865, cannot be read to mean any line between Carlisle and Glasgow, whether to the right or the left; otherwise it would include every yard of railway the Caledonian possesses, or may possess, south of Glasgow.

Locus standi Allowed, against Line 10 (the new duplicate line).

Agent for Petitioners, *Roberts.*

Agents for Bill, *Grahames & Wardlaw.*

CALEDONIAN RAILWAY (GLASGOW CENTRAL STATION, &C.) BILL.

Petition of the CITY OF GLASGOW UNION RAILWAY COMPANY.

19th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Sir J. P. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Railway—Locus Standi of Railway Company as landowner, unlimited—Taking and using Lands of one Company by another—Junction—Crossing—Cujus est Solum, &c.—The "Post" Case—S. O. 134.—("In what cases Railway Companies to be heard.")

A railway company has the same right to an unlimited *locus standi* when another company seeks to take part of its property as the common law of Parliament gives in such cases to a private landowner; and the practice of the Referees in this respect is not affected by the discretionary power now given to them by S. O. 134 (as to user of stations, accommodations, running powers, &c.) Thus, where railway arches let as a shop or office had been scheduled, but it was only proposed at this point to carry the promoters' railway under that of the petitioners:

Held, that petitioners had an unlimited *locus standi*, though their petition raised "an immense variety of topics."

The *locus standi* of the petitioners was objected to, because (1) the bill does not propose to take any of their lands or works, but only to carry railway No. 1, and street or road No. 1 under one of their railways; (2) petitioners are not entitled to be heard upon any allegations of injury to the access to various wharves, stations, streets, &c., the rights and interests respecting which are represented by other petitioners; (3) they cannot be heard upon their allegations as to the necessary public advantage, efficiency, engineering details, and estimated cost of the works proposed by the bill; (4 and 5) their allegations respecting the St. Enoch's station and the proceedings and intentions of the promoters are irrelevant and untrue, and, according to practice, no ground for a *locus standi* appears in the petition.

Cripps, Q.C. (for petitioners): We are landowners whose lands are taken, and, therefore, we claim a general *locus standi* against the whole bill. (Cliff. & Steph., *text*, 19.) We have received notice of the promoters' intention to take or interfere with our viaduct, telegraph wires, posts, and arches, one of which is occupied as an office and another as a shop. In every case up to the present time where land is proposed to be taken belonging to a railway company, the company has been allowed the *locus standi* of an ordinary landowner. (*London and North Western Railway* [the "Post" case] 1 Cliff. and Steph. 62; *Caledonian Railway Bill*, 2 Cliff. & Steph. 256.)

Pember (for promoters): No doubt we schedule this railway at the point indicated, but no railway could ever make a junction with another railway, or pass over another railway without scheduling the line at the point of junction or crossing. The cases quoted are cases in which land was actually taken, but this is only what may be called an engineering interference. Upon the *cujus est solum* principle we cannot, of course, go either over or under their land without a technical "taking," but the deposited plans show that we shall not take a yard of their land in order to use it. Under S. O. 134, the Court

now has a discretionary power to limit the *locus standi* of a railway company, not only where their stations or accommodations are to be used, but where their lands will be taken by another railway company. Thus you may allow the petitioners here to be heard only "against such provisions" of the bill as interfere with their land. In the *North Wales Railway case* (2 Cliff. & Steph. 242), though the land was scheduled, you limited the *locus standi* to interference with the land. The petitioners go into an immense variety of topics, but surely if railway A makes a junction with, or crosses, railway B in Lancashire, you will not press the S. O. so as to allow railway B to object to railway A shutting up a path at Peterborough.

The CHAIRMAN: A general *locus standi* is Allowed to the Petitioners.

Agents for Bill, *Grahames & Wardlaw*.

Agents for Petitioners, *Martin & Leslie*.

CLARE WASTE LAND RECLAMATION BILL.

Petition of ELIZABETH HANNAH PAGE.

18th June, 1873.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Parties heard by Court—Petitioners—Counsel—Agents—Solicitors—Managing Clerk.

On behalf of a female petitioner, no counsel or agent appeared. A clerk of the Parliamentary Agents desired to be heard, and failing him, the father of the petitioner proposed to represent her:

Held, that the Court could hear no person not being counsel, Parliamentary Agent, or petitioner.

Mr. Page (father of the petitioner) stated that he appeared in support of the *locus standi*.

The CHAIRMAN: Does any Parliamentary Agent appear for the petitioner?

The Managing Clerk of the Parliamentary Agents stated that he represented them, but was not himself a Parliamentary Agent.

The CHAIRMAN: The practice of the Court is either for the petitioner himself to appear or for counsel or agent to represent him.

The case was adjourned in order that the petitioner might secure the service of counsel or agent, but, as neither appeared, the petitioner's *locus standi* was Disallowed.

Agents for Petitioner, *Cope, Rose & Pearson*.

Agents for Bill, *Holmes & Co*.

CRYSTAL PALACE DISTRICT GAS BILL.

Petition of METROPOLITAN BOARD OF WORKS.

26th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—Gas Supply, Metropolis—Metropolis Gas Act, 1860—Metropolitan Board of Works—Jurisdiction of—Gas area, outside limits of Metropolitan Board—S. O. 135 (as to local authorities).

By the Metropolitan Gas Acts, the Metropolitan board of works are constituted guardians of gas consumers supplied by various gas companies specially mentioned (in the Act of 1860):

Held, that this guardianship extends to consumers supplied by gas companies not mentioned in the Act, even where portions of the districts of such companies lie outside the jurisdiction of the Metropolitan board.

The *locus standi* of the petitioners was objected to, because they did not allege, nor was it the fact, that the metropolis would be injuriously affected by the bill; and because the area supplied by the promoters was not within the jurisdiction of the Metropolitan board, and did not constitute a district under their management within the meaning of S. O. 135 (as to municipal authorities, &c.)

Cripps, Q.C. (for petitioners): Ever since the modification of S. O. 135 (as to municipal authorities, &c.), so as to include the Metropolitan board, whenever any gas company has come to Parliament to ask for new powers over any portion of the area under our jurisdiction, the board has appeared before the Committee in the interests of the consumers. The whole of the district served by the Crystal Palace company is not within our jurisdiction, but part of it is, and if the company only supplied a few roads within our jurisdiction, we should be entitled to appear, to protect the interests of consumers residing in the limited area. The Crystal Palace company is not one of the companies dealt with by the Act of 1860, which gives the Metropolitan board certain powers over these companies, but this fact in no way excludes our *locus standi*.

Mr. RICKARDS: Has the *locus standi* of the Metropolitan board ever been questioned where only part of the gas companies' area of supply lies within the jurisdiction of the board?

Michael (for promoters): No.

Cripps: I believe that a portion of the Imperial district lies outside our jurisdiction, but the Metropolitan board were present when the Imperial were before Parliament in 1869, and at their instance several important provisions were inserted in the bill for the protection of consumers. In the case of the *Gas Light and Coke*

Company, 1870 and 1872 (2 Cliff. & Steph. 45 and 217), our *locus standi* was allowed after argument. In the *Wandsworth Gas Bill*, 1871, our *locus standi* was not objected to in the House of Commons, but in the other House the question was raised and our right to appear was recognised, though the Wandsworth district is partly outside our jurisdiction, and the Wandsworth company is not included in the Act of 1860. If we are shut out here we shall be unable to secure that uniformity of legislation respecting gas in the metropolis which hitherto Parliament has thought expedient.

Michael (in reply) : This is the first case of the kind which has come before the Referees. It differs from previous cases in which the Metropolitan board has been allowed to appear against gas bills, because part of the company's district is outside the jurisdiction of the board, and the company was also specially exempted, after discussion, from the Act of 1860, as not being within the metropolis in respect of gas supply. As far as this bill is concerned, the Metropolitan board does not satisfy the requirement of S. O. 135, and is not the authority representing the district. The Lewisham board, not the Metropolitan board, are the proper persons to appear.

Mr. RICKARDS: The words of the S. O. are "municipal or other authority having the local management of the metropolis." The Lewisham board have not the local management of the metropolis.

Michael : This is not a matter having to do with the local management of the metropolis. The local management of this part of the metropolis is vested in the Lewisham board. The Metropolitan board have nothing to do with this district, and cannot execute any works there except as part of a general scheme, such as arterial works of drainage.

Locus standi Allowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

DUNDALK AND GREENORE RAILWAY BILL.

Petitions of (1) MIDLAND RAILWAY COMPANY ;
(2) CHESHIRE LINES COMMITTEE.

5th May, 1878.—(Before Mr. ADAIR, M.P., Chairman ; Mr. BRISTOWE, M.P. ; and Mr. RICKARDS.)

Railway—Dissolution of Railway Company—Powers of Dissolving Company sought by Another—Share Capital Subscribed by Third Company—Working Arrangements—Running Powers—Competition—Virtual Amalgamation, alleged—Railway Company, only Nominally Independent—Railway Monopoly, alleged—Actual Control of Railway by Third Company—Agreements—Protective Clauses—Joint Committee—English Interests in Irish Railways—Cross Channel Traffic.

An Irish railway company obtained statutory power to make a line from Newry to Greenore, but did not exercise the power. A bill was now promoted by another Irish company, whose line extended from Dundalk to Greenore, transferring to them the power of constructing the Newry and Greenore line, empowering the London and North Western company to subscribe three-fourths of the share capital required, and authorising traffic arrangements with another Irish railway company and a joint committee for certain purposes of working. The London and North Western had already, under an Act of 1867, subscribed three-fourths of the capital of the Dundalk and Greenore company. Two English companies competing for traffic with the London and North Western obtained equal facilities in previous Acts, regulating the relations between the London and North Western and the Dundalk and Greenore railways. These two competing companies now sought to be heard against the bill, alleging that otherwise the London and North Western, as chief proprietors of the lines converging at Greenore, might establish a virtual monopoly of Irish traffic at that point, and thus the previous intentions of the Legislature might be frustrated :

Held, that both the petitioners were entitled to a *locus standi*.

The bill was one, *inter alia*, to dissolve the Newry and Greenore railway company, to empower the Dundalk and Greenore and London and North Western companies to subscribe the capital required for the completion of the Newry and Greenore line, and to authorise working arrangements with the Newry and Armagh line, by means of a joint committee in which the London and North Western company would be represented.

The *locus standi* of both petitioners was objected to, because (1) the bill contains no provision enabling the promoters to set up any competition with the petitioners, other or greater than already exists, or than the promoters are at present able to set up ; (2) the allegations as to the virtual amalgamation which will or may be effected under the bill, even if well founded, which the promoters deny, do not entitle the petitioners to be heard ; (3, 4 and 5) no competition or interference with competition is alleged entitling the petitioners to be heard, no property, rights, powers, or privileges of theirs will be interfered with, and they cannot be heard consistently with practice.

Cripps, Q.C. (for Midland company) : In 1864 and 1867 the London and North Western railway

company obtained powers from Parliament to make traffic arrangements with certain railway companies in the north-west of Ireland, and particularly with the Dundalk and Greenore company. The North Western now seek powers to make special arrangements with another railway, extending from Greenore to Newry, where it joins the other railways, with which they are already empowered to make traffic arrangements. We submit that we should be heard against this bill, which is practically an amalgamation bill, on the ground that it proposes to transfer an existing independent company, or one which would be more or less independent if left alone, into the hands of a larger company. The principle is well established that companies interested are allowed to be heard against what is more or less an amalgamation of other railways; and that principle has been extended to Scotland and Ireland as well as England. The Midland company, as carriers of traffic between England and Ireland, were heard against the North Western proposals of 1864. The state of things is the same now. When we take our goods to Greenore we find there a railway, which, at present has no interest, except to accommodate our traffic in common with that of any other railway; but if this line at Greenore comes under the control of our rival in England, all the traffic of the north-west of Ireland may be handed over to this rival. The result of our opposition in 1864 was that the Midland and other English companies became entitled to enter into the same agreements for transmission of traffic, which the North Western might make with the Dundalk and Greenore and other Irish companies. In 1867 the North Western obtained power to subscribe £130,000, out of £160,000, towards the capital of the Dundalk and Greenore company; and again the Midland company were heard, and procured protective clauses, in order to guard against the creation of any monopoly injurious to their interests. The Dundalk and Greenore line, communicating at Dundalk with the other lines with which the North Western has power to make traffic arrangements, commands one key of the position. The Newry and Greenore, a line sanctioned but not hitherto made, is another key. We have rights over the Dundalk and Greenore by virtue of our previous opposition in Parliament. Now the North Western seek to attain their objects in another way, through the Newry and Greenore line, towards which the bill empowers them to subscribe £195,000 out of a total capital of £240,000 required for the construction of that line. The Dundalk and Greenore and the Newry and Greenore lines are both to be in the hands of one company; practically, they will be amalgamated; and their independence will be merely nominal, for out of a total share capital of £400,000, the London and North Western company will hold £325,000. They will thus control the traffic and be able to block our traffic at least at one of the chief points of access to Greenore. It was idle to give us equal facilities in 1864 and 1867, if the North Western are now to secure the same monopoly by another process behind our backs. The joint committee is an ingenious contrivance for ousting us of our

present right to equal facilities. Under the Acts of 1864 and 1867, we are entitled to the benefit of whatever agreement is entered into between the North Western and the Dundalk and Greenore and other Irish companies. But a joint committee will enable these companies to dispense with an agreement, and we shall therefore be told that any traffic facilities from which we are debarred are not the result of agreement, and do not come within the terms of the Acts of 1864 and 1867.

Pember (for the Cheshire Lines Committee): We are carriers between Chester and Liverpool of a large quantity of traffic which passes to Ireland, and this traffic is protected in the Act of 1867. The principle laid down in the *Dundalk and Greenore* case, 1869 (1 Cliff. & Steph. 108), applies here. We ask, in the interests of the companies which have hitherto been protected, that, if the virtual proprietorship of this new line by the North Western be allowed at all, it should be accompanied by the same safeguards as have hitherto been insisted on by the Legislature. The bill empowers the company, which is nominally the Dundalk and Greenore, to make arrangements (a distinct thing from running powers) with the Newry and Armagh company, and as the Newry and Armagh line makes a very important straightening of the route between Londonderry and Greenore and London, it is more than probable that the traffic which used to go by Belfast will now go by Greenore.

The CHAIRMAN: The proposed scheme, with the powers sought for to Armagh, will give a pretty nearly straight run for the whole emigration traffic from Londonderry to Liverpool, which is no doubt the object of the London and North Western company.

Pember: Besides the precedents of 1864 and 1867, I may cite the Waterford and Limerick Arrangements Bill, 1866, and the Dublin, Wicklow, and Wexford Bill, 1870, when protective clauses were inserted at the instance of English railway companies. In the amalgamation of the Scottish North Eastern and the Scottish Central with the Caledonian, English railway companies were protected even as far off as the Great Northern at York and the North Eastern at Berwick.

Macrory (for promoters): In all the Irish bills which have been cited, powers were taken to make traffic arrangements with English companies. But in this bill there is no power whatever either to make or to alter any traffic arrangements between the English and the Irish railway companies. All the Dundalk and Greenore company seek to do is to acquire powers to construct a line already authorised but not made, and for this purpose to stand in the shoes of the Newry and Greenore company. The word "amalgamation" has been used, but the bill contains nothing in the nature of amalgamation. The proportion of capital which the London and North Western will subscribe under the bill is the same as was sanctioned by the Legislature in 1867, and against that bill the petitioners were allowed to appear only because the bill contained traffic arrangements.

Cripps: Clause 53 gives you power to make traffic arrangements.

Macrory: Not between railways in England and railways in Ireland, but only between ourselves and the Newry and Armagh company. As to the joint committee, it will only be appointed for the purpose of certain running powers over the Newry and Armagh line and for the management of the station. With the protective clauses given to the petitioners in 1864 and 1867 the bill will in no way interfere.

Locus standi of the Midland Railway Company and the Cheshire Lines Committee *Allowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Midland Railway Company and Cheshire Lines Committee, *Dyson & Co.*

DUBLIN, RATHMINES, RATHGAR, &c., RAILWAY BILL.

Petition of (1) HENRY BRETT; (2) of HENRY VISE and OTHERS; (3) of THOMAS KINGSTON AUSTIN.

June 18th and 19th, 1873.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Insolvent Railway Company—Creditors—Abandonment of Railway, Proceedings on—Board of Trade Warrant—Railway Deposit Forfeited—Bond for Deposit—Judgment Creditor—Stop Order—Winding-up of Railway Company—Abandonment of Railways Acts, 1850 and 1869—Railway Companies Act, 1867—Companies Act, 1862 and 1867—Single Creditor Promoting Bill—Priorities among Creditors of Railway Company—Distribution of Assets, Court of Chancery—Landowners—Notice under S. O.—Damages, claim of, against Railway Company—Property not taken for Railway, after S. O. Notice.

A financial association, representing a kindred association which had advanced the amount of deposit to a railway company now insolvent, promoted a bill enabling the Treasury to remit the forfeiture of this deposit, and also to authorise the division of the money among the company's creditors through the Court of Chancery. A *locus standi* against the bill was claimed by a judgment creditor, who had obtained a stop-order from the Court of Chancery in his favour, before the forfeiture of the deposit through the non-completion of the railway, and who now complained that his priority would suffer, and that the promoters would or might obtain some undue preference under the bill:

Held, that, as the money, being absolutely forfeited to the Crown, could not be affected by any judgment obtained against the railway company and could not be available for the benefit of any creditor unless the bill passed; and, further, that as the bill simply set free the deposit for distribution among such parties, and with such priorities as the Court of Chancery approved, conferring no preference or priority upon the promoters, the *locus standi* must be disallowed.

The same decision applied *a fortiori* to two other petitioners, landowners who had received notice that their property would be required for the purposes of the railway, but who, not having received statutory notice to treat, could not even rank as creditors against the railway company.

The bill was promoted by the Imperial Mercantile Credit company, limited and reduced, its object being to empower the Treasury to remit the forfeiture of £12,800 of deposit money and interest, now in the Court of Chancery in Ireland, and, as the preamble alleged, absolutely forfeited to the Crown through non-completion of the Dublin, Rathmines, &c., line, within the period limited by the enabling Act. The preamble recited the advance of the money to the railway company by a finance association now represented by the promoters, and the bill provided that if any warrant for the abandonment of the authorised lines were granted by the Board of Trade, the deposit money should be applied as part of the assets of the company, and the company should be wound up under the Companies Acts, 1862 and 1867. The bill further provided that the Court of Chancery "may direct" that the deposit money should be "applicable only for the payment of such debts as, regard being had to what is fair and reasonable as between all parties interested, under all the circumstances of the case, the Court may think fit to specify in that behalf." The Imperial Credit company took power under the bill to attend all the proceedings, and apply to the Court for the purposes specified. The judgment creditor, Mr. Brett, had already memorialised the Board of Trade for an abandonment warrant under the general Acts.

The *locus standi* of Henry Brett was objected to, because (1) his position as a memorialist to the Board of Trade is in no way affected by the bill; (2) it is not true, as alleged, that the bill does not recognise his position as such memorialist, for clause 3 distinctly contemplates the grant of an abandonment warrant by the Board of Trade upon the application of any competent persons or company; (3) the money deposited for the Act of 1865 being absolutely forfeited to the Crown, the petitioner can have no right, claim, or interest to or in it; or if he has, such right, claim or interest, is not interfered with by the bill; (4) the bill in no way affects the juris-

diction (if any) of the Court of Chancery in Ireland with reference to the Abandonment of Railways Act, 1869; (5) the petitioner does not show any such interest in the provisions of the bill as entitles him to be heard against it.

The *locus standi* of Henry Vyse and Others, and of T. K. Austin, was objected to for reason 5, as above, and also because (1) no property right or interest of the petitioners is or can be affected under the bill; (2) it is not true, as alleged, that the bill has for its object to appropriate the deposit, nor would the bill nullify or in any way affect any legal remedies of the petitioners; (3) no preference or priority is given by the bill as alleged, or suggested, in the petition, to the Imperial Mercantile Credit Association (Limited), or to any other company or person over the petitioners, or any other creditor of the railway company; and (4) the bill contains no provision affecting the petitioners.

Pembroke Stephens (for all the petitioners): The bill materially alters the public law respecting the abandonment of railways (Acts of 1850, 1862, 1867, and 1869). Mr. Brett has memorialised the Board of Trade in pursuance of the provisions of these Acts, praying for a warrant for the abandonment of the authorised lines; but the bill ignores this application, which is now pending, and ousts Mr. Brett from the position he holds by virtue of his memorial. The promoters might have followed his example and memorialised the Board of Trade, but by seeking to pass a special Act of Parliament, they must necessarily prejudice Mr. Brett. One result of the clauses in the bill will be to transfer the winding-up of the company from Ireland, where Mr. Brett and the majority of the creditors reside, to England, where the office of the promoters is situate. That step will be to the disadvantage of my clients. Other railways have been abandoned, and deposits distributed among creditors under the authority of the general Acts; and there is no sufficient reason why the same course should not have been followed in this instance.

Rees, Parliamentary Agent (for promoters): This bill is introduced with the sanction of the Board of Trade, after taking the opinion of the Attorney and Solicitor-General, to cure a *casus omissus* in the Act of 1867. That Act enables the Treasury and, through the Treasury, the Court of Chancery, to deal with the deposit where, after the time for completing the line has expired, the money is represented by a bond; but it does not enable the Treasury to consent, or the Board of Trade or Court of Chancery to act, if the money has become forfeited in specie.

Stephens: That is a difficulty with which the promoters are pressed, but it is not a difficulty felt by Mr. Brett, who will persist in his application to the Board of Trade for a warrant of abandonment, unless prevented by the passing of this bill.

Rees: From direct information, I can say that the Board of Trade will not go on with the warrant of abandonment, so that Mr. Brett cannot recover unless the bill goes on.

Stephens: Surely an omission in the general law should be supplied by a general Act, not by a private bill of a most special and exceptional

character, promoted by a single creditor; and, at any rate, Parliament, in entertaining such an application, will see that nothing is done to prejudice the rights of third persons under the general law. Mr. Brett may ultimately fail in persuading Parliament that the passing of this bill is not the best thing to be done for the creditors of the company; but as he has an admitted claim against the company, and has adopted the course pointed out by the general law and hitherto invariably followed in abundant cases, it would not be right to shut his mouth before the Committee.

The CHAIRMAN: You must go the length of saying that any judgment creditor is entitled to oppose the bill.

Stephens: I go further, and say that any person who can show fair grounds for establishing a claim against the company has a right to appear. Messrs. Vyse and Austin are not judgment creditors but owners of premises in Dublin, who in 1864 were served with notice by the original promoters of the railway that their property would be required for the purposes of the line, and might be taken by compulsion. Such notice, they allege, has prevented them from using their premises beneficially, and subjected them to great loss. An offer was actually made to these petitioners on the part of the company, but the price was only about half what the property cost these petitioners.

The CHAIRMAN: No statutory notice to take was given to them. What was there, then, to prevent them from doing exactly what they liked with their property?

Mr. RICKARDS: What occurred between the company and the petitioners seems to be this: the promoters gave them notice that the railway would run through their premises, and that the bill contained powers to take these premises by compulsion; and then the company made an offer for the property and the petitioners refused the offer. The position seems to be merely that the petitioners have lost the opportunity of selling their property to the company.

Stephens: What would have been their chances of compensation if, after receiving notice that their property was required for the purposes of the railway, they had laid out money in improving this property, as they had intended?

The CHAIRMAN: You cannot put the case higher than this—that these petitioners may possibly have a claim for damages.

Mr. RICKARDS: They are not creditors; but even if they were, creditors are not heard against a bill of this description.

Stephens: There is a wide distinction between bills promoted by a railway company for extension of time or abandonment and the present bill, which is not promoted by the railway company, but by an outsider, a single creditor of the company, for the purpose of dealing with the only remaining asset of the company, as against all other creditors and persons who may be able to establish a legal claim upon the fund.

The CHAIRMAN (to Mr. Rees): You need not address yourself in reply to the petitions of Messrs. Vyse and Austin.

Rees: The Attorney and Solicitor-General have distinctly advised that, owing to the wording of

section 34 in the Railway Companies Act, 1867, while the Treasury have power to remit the forfeiture, and the Board of Trade have power to authorise an abandonment, where the money has been taken out upon bonds, neither the Treasury nor the Board of Trade have power to deal with money which, as in this case, remains in specie in the Court of Chancery and has become forfeited. The usual abandonment process under the general Acts becomes, therefore, impossible here. Other difficulties occurred which could only be removed by special legislation, but the bill, so far from prejudicing anybody's rights, is strictly limited to the removal of these difficulties, without which the Board of Trade can make no abandonment order, the deposit money cannot be dealt with as assets for the benefit of any creditor, and the Court of Chancery can take no steps for winding up. It will be open to Mr. Brett to apply to the Court of Chancery to direct that the deposit-money shall be expended in paying him only; and the Court may grant that application consistently with the bill. The whole object of the bill is not to evade but to give effect to the general Acts bearing upon the abandonment of railways, supplying omissions in those Acts; and the recital in the preamble distinctly shows this object. The bill simply empowers the Treasury to say, "We will release this money which is not ours, and at the same time justice shall be done to all claimants in the Court of Chancery."

Locus standi of all the Petitioners *Disallowed*.

Agents for Bill, *Dorington & Co.*

Agent for Henry Brett, *Walter Webb*.

Agent for Messrs. Vyse and Austin, *Cruse*.

DUBLIN TRAMWAYS BILL.

Petition of DUBLIN, WICKLOW, and WEXFORD RAILWAY COMPANY.

30th April, 1873.—(*Before Mr. BONHAM-CARTER, M.P., Chairman of the Committee of Ways and Means, presiding; Mr. ADAIR, M.P.; and Mr. RICKARDS.*)

Tramways in Ireland—Competition with Railways—Grand Jury, Enquiry before—General Legislation, Alleged evasion of—Tramways Act, Ireland, 1860—Turnpike Roads (Trustees of)—Frontagers—Street—Road—Railway Station, Definition of—Distance of Railway Station from Line of Tramway—Railway Approaches—Shops—Railway Traffic.

A railway company in Ireland petitioned against a tramway bill on the ground of competition, alleging an absolute right to be heard, secured to them by the Tramways (Ireland) Acts of 1860 and 1861, had the construction

of the tramways been proceeded with as the Legislature contemplated, under the provisions of these general Acts:

Held, following the precedent of 1871 (2 Cliff. & Steph. 142), that the general Acts do not override the practice of Parliament, namely, that railway companies cannot be heard against tramway bills on the ground of competition.

The railway company also claimed to be heard against the bill as frontagers, alleging that the tramway would injuriously affect the traffic to two of their stations. As it appeared, however, that the high road along which the proposed tramway would run was distant from one railway station one-sixth and from the other station one-third of a mile:

Held, that the railway company had no *locus standi* against the bill on this second ground, though the roads between the two stations and the high road to be occupied by the tramway were their private property, and formed the only connection with the high road.

The *locus standi* of the petitioners was objected to, because (1) no lands, buildings, or property of theirs are taken or interfered with; (2) they have no such ownership or interest in any lands, stations, houses, or warehouses in any street or road through which the proposed tramway will run as entitles them to be heard; (3) consistently with practice they cannot be heard on the ground of competition; (4) the Tramways Act, Ireland, 1860 (amended by the Tramways Act, Ireland, 1861) is intended to facilitate internal communication in Ireland by means of tramroads or tramways, and its provisions are in no way applicable to the construction of street tramways such as are proposed by the bill.

Cripps, Q.C. (for petitioners): The bill takes power to make a tramway from Dublin to Blackrock parallel to and closely adjoining the Dublin and Kingstown railway, part of our line; and we oppose the bill on the ground of competition and as frontagers. As to competition, the Court has hitherto not allowed railway companies to be heard against tramways on this ground (2 Cliff. & Steph. 82, *et seq.*), but the Court has not decided that under no circumstances can a railway company be so heard. Here there will be something more than an omnibus competition, because the old high road will be employed for a new method of locomotion under the authority of Parliament.

Mr. RICKARDS: The trustees of a turnpike road were never allowed a *locus standi* against railways. Supposing the trustees of a turnpike road, in order to enable them to compete with a railway, determined to lay down a tramway

along their road, would you say that the railway was entitled to be heard against their tramway, though they were not entitled to be heard against the railway?

Cripps: If they are proposing to do something by which they will injure me, I am entitled to be heard to say, "you shall not have exceptional legislation for that purpose."

Mr. RICKARDS: The same argument would give to the trustees of turnpike roads a right to be heard against railways.

Cripps: The Tramways Acts, Ireland, introduced into the consideration of cases of competition between railways and tramways in Ireland an element which does not exist in England. These Acts (23 & 24 Vict. c. 152, amended by 24 & 25 Vict. c. 102) were passed for the purpose of facilitating internal communication by means of tramways; but the first Act provided (section 1) that no application should be made under its provisions for tramways "to unite places between which statutory powers for making a railway or railways for directly connecting the same shall have been granted and be in force." Section 5, of the Act of 1860, also provides that the grand jury "shall hear, in opposition to the application, any railway or other company, or person desiring to be heard on the ground of competition." Thus, if the promoters had applied for power to construct the tramway under this general Act we should have had an unquestionable right to be heard before the power could have been granted by the grand jury. No doubt the object of the promoters in coming to Parliament, instead of going before the grand jury, is to shut us out, if they possibly can do so.

Mr. RICKARDS: The grand jury cannot even exercise a discretion as we can, but under this Act are bound to hear the railway company?

Cripps: Yes. I do not say the Act binds this tribunal, but in exercising your discretionary power you will consider that the promoters are evading general legislation already provided for the very purpose they seek to accomplish, and are thus depriving us of the hearing which otherwise must have been given to us before our traffic was abstracted and our interests were affected. As frontagers, we object that the proposed tramways will run along the public road in front of the private approaches to our Booterstown and Blackrock stations, and that we shall thus be injuriously affected in the use and enjoyment of our premises, and the conduct of our business. No frontager can be more seriously affected than a railway company whose traffic to and from its station is interfered with.

Mr. ADAIR: The interference is greater in the case of a shop than in the case of a station, because the service of trains is only at certain times, whereas persons go in and out of carriages and cabs at any time the shop is open.

The CHAIRMAN: The great inconvenience tramways inflict on shops is that carriages drawing up to the shop are interfered with. Here there is no question of drawing up on the road upon which the tramway is to be laid; it is only that the traffic coming to the railway has to cross the road.

Clerk, Q.C. (for promoters): The distance between the tramway and the station is the sixth of a mile in one case, and a third of a mile in the other.

Cripps: The road between the tramway and each station is our private property, and must be taken as forming part of the station. Our passengers cannot get to the station except by crossing the road upon which the tramway is to be laid.

Mr. RICKARDS: The S. O. seems to have been framed to meet the case of interferences with frontagers "in any street."

Cripps: A shop or warehouse might be interfered with just as much on a road as in a street. It is often difficult to say where a street ends and a road begins. In the Sanitary Acts, I think, "street" includes "road."

Mr. ADAIR: There are so many intervals between the houses, particularly at Booterstown, that it cannot be called a street in the sense in which the road from Kensington to Turnham Green may be called a street.

Clerk: I shall not raise the question whether this is a street or a road. I say that in either case the line of tramway is at a greater distance from the station than is contemplated by the S. O.

Cripps: The private road between the tramway and the station belonging to the railway company, and being continuous between these two points, without any other access to or from the station except by crossing the tramway, this private road is as much a part of the station as the space enclosed in front of Euston station is part of the London and North Western station. The distance of the station from the tramway is immaterial if the intervening space is owned and occupied by the railway company. "Station" might be properly defined as including the private property of the railway company at the station.

Clerk (in reply): As to competition, the *London Street Tramways Bill* (3 Cliff. & Steph. 181) shows conclusively that railway companies cannot be heard against tramways on this ground; and in the *Dublin Tramways Bill* (Ib. 142) the Court held that the general Acts here quoted make no difference in the practice of the Court. The object of these General Tramway Acts was to facilitate the construction of cheap rural railways for the conveyance of passengers, goods, and minerals, but those railways are entirely distinct from the tramway now proposed. With regard to the claim of the railway company as frontagers, the argument that roads at such a distance from the tramway must be treated as part of the station, is untenable.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Holmes & Co.*

EDINBURGH, LOANHEAD, AND ROSLIN RAILWAY BILL.

Petition of PENICUIK RAILWAY COMPANY.

17th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Railway, Extension of—Competition—Difference in Levels—Railways Serving Different Traffic—Minerals—Passenger Traffic.

An extension of an authorised railway was proposed, such extension starting from a different point, but running through a valley traversed by a line already constructed and ending about half a mile from the terminus of that line. In answer to the petition of the company owning this line, the promoters urged that their proposed extension would be constructed on different levels, and would serve a different traffic, its object being to carry ironstone from certain new mines in the valley; and that thus the case was not one involving practical competition, though the average distance between the two railways along the valley would not be greater than half a mile. The bill did not limit the traffic on the proposed extension to minerals:

Held, that the petitioners had a *locus standi* on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) no land, &c., of theirs will be taken; (2) their rights and interests will not be interfered with; (3) there will be no such competition between their line and the line proposed by the promoters as entitles the petitioners to be heard according to practice.

JUNNER (for petitioners): Our railway runs from Hawthornden to Penicuik. The promoters have an authorised line, not yet constructed, from Millerhill to Roslin. They now come for an extension of that line from Roslin to a spot within 800 yards of Penicuik, so that practically they come to Penicuik. There is nothing in the bill to prevent the promoters from carrying either mineral or passenger traffic. Both lines will run through the same valley; the greatest distance between the two is 1,500 yards, while at one point, near our Auchendinny station, they will be within 400 yards. The average distance of the proposed line from ours up the North Esk valley is only half a mile, and it ends about half a mile to the north of our terminus.

Pember (for promoters): The levels are altogether different and the river intervenes between the two lines.

JUNNER: Our railway crosses the river several times. It therefore serves both sides of the

river. The proposed line of the promoters does not touch the river at all. Our station at Auchendinny serves Greenlaw, where there is an important barrack and military prison. The proposed line would have a station at Greenlaw, and would seriously compete with us for traffic there. Then, though the promoters do not touch Penicuik at present, yet the town which now has a population of 2,500, may soon extend so as to come up close to their station. Their object obviously is to abstract our traffic. The *North Kent Railway* case (Smeth. 136) is in point.

Pember (in reply): There is a difference of 150 feet in the levels of the two lines at the point where our proposed railway and that of the petitioners come so near together. We are going to serve a number of mineral pits which are being opened. The Penicuik line begins at Hawthornden and goes to Penicuik; ours begins at Millerhill, and the terminus of the proposed extension will not be Penicuik, though it is in the parish of Penicuik. In a mineral or a manufacturing district it depends entirely on the configuration of the ground whether or not two schemes really compete. The Penicuik line serves the paper mills on the river; we go on the other side of the river, 150 feet above them, to places to which they cannot possibly get, and for a totally different purpose.

The CHAIRMAN: You contend that, being on a different level to them, and anticipating a different sort of traffic, you are not competitors with them?

Pember: Yes; we go to ironstone pits, now being sunk by two companies which have works upon our authorised line, and want to take the ironstone to these works. It is for that purpose we propose the extension.

Mr. RICKARDS: Is your proposed extension not to be a passenger line?

Pember: The notices state it to be a mineral line.

The CHAIRMAN: But there is nothing in the bill which reserves the line for all time as a mineral line, and that line takes you into the parish of Penicuik. Can you refer to any case in support of the principle that, in a mineral and manufacturing district, lines on different levels and anticipating different sorts of traffic are not necessarily competitive?

Pember: I cannot refer to any particular case, but I submit the proposition as a sound one. Suppose two ranges of hills separated by a valley. On one side there might be a railway for the purpose of opening up minerals; and on the other side another railway might be made for opening up another set of mines. The Penicuik line at the bottom of this valley could not serve the mines which we mean to serve; the gradients would make it hardly possible to do so. We neither begin nor end at a common point with them. The country we traverse is different, and though the contiguity of the two lines gives an appearance of competition there is practically no competition at all. (*Metropolitan and St. John's Wood Railway*, 2 Cliff. & Steph. 19; *London and North Western Railway*, *Petition of Festiniog Railway Company*, 2 Cliff. & Steph. 103.)

Locus standi Allowed.

Agents for Bill, *Simson & Wakeford.*

Agent for Petitioners, *Gloag.*

EDINBURGH STREET TRAMWAYS BILL.

Petition of OWNERS AND OCCUPIERS.

30th April, 1873.—(*Before the Chairman of Ways and Means, Mr. BONHAM-CARTER, M.P.; Mr. ADAIR, M.P.; and Mr. RICKARDS.*)

Tramways—Extension of time for Constructing—Steam-power, proposed use of, on Tramway—Crossings—Sidings—Connection with Railways—Consent of Road Authority—Plans, Absence of—Owners and Occupiers—Limitation of Locus Standi against Tramway Bill—Frontagers—S. O. 136—Inhabitants and Local Authority, S. O. as to, Read Distributively—Municipal Corporation, Agreement with Tramway Company—Road Trustees—Omnibuses, worked by Tramway Company—Apprehended Monopoly of Street Traffic by—Consumers of Gas, Distinction between, and Inhabitants.

Practice—Notices of Objection—Limitation of Locus Standi—Need not be expressly raised in Notices.

A tramway company, which had completed a considerable portion of their undertaking in Edinburgh, sought to extend the time for completing the remainder, and in the same bill took powers to use steam traction, to make crossings, sidings, and connections with railway stations, and to purchase omnibuses. The bill was opposed by the corporation of Edinburgh, and by the road trustees, and to the *locus standi* of both these bodies no objection was raised. Against a petition of owners and occupiers along the streets traversed by the tramways, it was urged that, as frontagers, the S. O gave them no right of opposition, the tramways here being already authorised and in great part constructed, while, as to the new powers sought, the local authorities, whose petitions raised the same points, were the proper parties to appear. On the part of the petitioners it was contended that they had a *locus standi* both as frontagers and as inhabitants of Edinburgh, who would be injuriously affected by the bill, and that their *locus standi* should be unlimited:

Held, that the petitioners were entitled to appear, their *locus standi* being limited to two clauses (extension of time and power to make crossings, &c.), with so much of the preamble as related thereto.

Though notices of objection may not expressly ask that the *locus standi* of petitioners should be limited, promoters are not thereby precluded from urging such limitation in argument, and the Court will exercise its discretion accordingly.

(*Per Cur.*) Gas consumers differ rather from inhabitants in being themselves injuriously affected, and not merely the town.

The object of the bill was "to extend the time for the completion of certain of the authorised works of the Edinburgh street tramways company, and to authorise the company to use other than animal power on their tramways, and to purchase and work omnibuses and other carriages, and for other purposes." The corporation of Edinburgh and the road trustees had petitioned, and their *locus standi* was not objected to. The petition now in question was the petition of "the persons hereunto subscribing, being owners and occupiers respectively of warehouses, shops, and other property, in the city of Edinburgh, on the principal lines of streets traversed by the tramways."

The *locus standi* of petitioners was objected to, because (1) the petitioners do not allege or show that the petitioners are inhabitants of any town or district injuriously affected by the bill; (2) no property, right, or interest of the petitioners will be taken or affected under the bill, which (3) does not authorise the construction of any tramway, and the petitioners, therefore, have no right to be heard under the S. O. (as frontagers); (4) the local and road authorities have petitioned as to all the matters complained of in the petition; (5) the petitioners have no interest in the objects and provisions of the bill entitling them to be heard against it.

Mundell, Q.C. (for petitioners): This tramway company was incorporated in 1871. The Act authorised the employment of animal power only, and, by an agreement with the corporation, scheduled to the Act, the company became bound to complete the works in three years. Half the works, however, remain unexecuted, and (section 4) of the bill extends the time for completing them by one year. We object to this change in the company's obligations, for clause 4 will invalidate the agreement with the city, and will relieve the company from the consequences of their failure to complete their undertaking. Clause 5 empowers the company, "with the consent in writing, from time to time, of the local authority of any street or road, to move all or any carriages in such street or road, by any power to be specified in such consent other than animal power." The petitioners object to any such authority being conferred, either on the company or the local authority, for the use of steam as a motive power cannot fail to be inconvenient to the ordinary street traffic, dangerous to the public safety, and detrimental to owners and occupiers along the line of tramway. Then (section 6) the company propose to purchase omnibuses and horses, and use them

in connection with any of their tramways; and to this provision the petitioners object, because it will be used by the promoters to drive the existing omnibuses off the roads, and thus acquire a complete monopoly of the street traffic. The company also (section 7) seek power, with the consent of the local and road authorities, to make "additional crossings, passing places, sidings, junctions, and other works necessary or convenient to the efficient working of the tramways, or for providing access to stables, sheds, or works, or to any station or waiting place of the company, or of any railway companies." Such powers, to be exercised on any parts of the streets, without specification or limit, and with no other control than that of the local authority for the time being, may be used so as not merely to disfigure the streets, but to usurp the use of the highway, and will in any case be injurious to the petitioners; and the proposed connections with railway stations may result in railway trucks, carriages, and engines being brought upon the tramway. We ask to be heard as frontagers under the S. O., and also as inhabitants. No plan of the proposed crossings and sidings being deposited, section 7 would enable the company to make these crossings, &c., anywhere; and therefore every frontager in every street traversed by the tramway would in strictness be entitled to appear. The promoters object that the bill does not authorise the construction of any tramway. But section 7 authorises the construction of tramways in the most mischievous manner, the only protection being the local authority or the road trustees whom we have no right of nominating or electing. If we have a right to appear at all, we have a right to appear against the whole bill; if we had an unquestionable right to be heard against the bill of 1871, we have an equal right to oppose this extension of time. As to the argument that we are represented upon all these questions by the local authority or the road trustees, our objections may or may not be urged by them; but really our interests are distinct. (*Liverpool Tramways Bill, Petition of frontagers, &c.*; 1 Cliff. & Steph. 142.) There the petitioners were allowed to appear, apart from the corporation, against the whole bill; and the objections taken to them were identical with those taken here. As to the objections that we are not "inhabitants" within the meaning of the S. O., we say we are owners and occupiers of premises along the line of tramways, and therefore we must be inhabitants, unless it is said that we do not sleep there, which would be hair-splitting.

Mr. RICKARDS: The construction we have always given to the S. O. (as to *locus standi* of local authorities and inhabitants), is that it is intended to be read distributively.

Mundell: Though usually so read, it was not read distributively in the *South London Gas Bill* (2 Cliff. & Steph. 220), where consumers of gas were allowed a hearing as well as public bodies.

Mr. RICKARDS: Consumers of gas stand on rather a different footing from inhabitants, because the case of gas consumers is not that the town in which they live will be injuriously affected, but that they as consumers of gas are affected by the bill.

Mundell: Here the running of steam engines would very injuriously affect the petitioners and inhabitants, and it is not specially the duty of the road trustees to protect the inhabitants from this nuisance. For all that appears on the face of the petition, we may be occupiers of frontages along the eight miles of tramway not yet made; and, if so, the extension of time would be a great nuisance to us. I admit that a large proportion of the petitioners reside on the line already made.

Clerk, Q.C. (for promoters): The petitioners can have no right to be heard as frontagers, for we do not, in the words of S. O. 136, seek to construct a tramway "in any street" in which their property is situated. Their right to appear must therefore arise as inhabitants. They object to the extension of time, because it will break through an agreement with the corporation; but the corporation, as well as the road trustees, petition against us on this ground. Moreover, how can a mere extension of time affect the interests not of persons along the line of the unmade tramway, but of inhabitants generally, who do not allege that the city will be injuriously affected? The use of steam power is in like manner opposed by the local and the road authorities; and the clause has been withdrawn.

Mundell: We deal here with the bill as it stands.

Clerk: The petitioners on this point make general allegations of what is for the advantage or disadvantage of the public; but it is not the practice of the Court to allow inhabitants to be heard on such general allegations, especially where the local authorities appear on the same grounds. As to the power to purchase omnibuses, the petitioners are not omnibus proprietors, and our only object is to carry traffic in connection with the tramway. Then comes the power to make crossings, sidings, and junctions with lines of railway.

Mr. RICKARDS: Might not this clause give the company power to make an auxiliary line of tramway between any one of their tramways and any railway station?

Clerk: No doubt a passing place or siding might be made opposite the house of one of these gentlemen.

Mr. RICKARDS: More than that—a junction might be made carrying a tramway along a street where hitherto there has been no tramway, and affecting persons who have had no notice.

Clerk: As frontagers, the petitioners may be entitled to appear against this section, but against no other part of the bill.

Mundell: The gauge of the tramway is the same as that of the railways, 4ft. 8½in., and therefore railway carriages may pass along the tramway. As to the suggestion that our *locus standi* should be limited, I may cite the *London Street Tramways* case (2 Cliff. & Steph. 188).

Mr. ADAIR: The promoters object to your *locus standi* against clause 4 (extension of time), clause 5 (power to work tramway with other than animal power), and clause 6 (power to acquire omnibuses), conceding a *locus standi* against 7 (additional crossings, &c., to be made where necessary).

Mundell: The notices of objection do not say that we are entitled only to a limited *locus standi*.

Mr. RICKARDS: It is not necessary that they should expressly say so.

Clerk: In the *Dublin Tramway* case (2 Cliff. & Steph. 142), the *locus standi* of an opposing railway company was limited to the question of frontage.

Locus standi Allowed against clauses 4 (extension of time) and 7 (power to make crossings, &c.), and so much of the preamble as relates thereto.

Agents for Bill, *Dorington & Co.*

Agent for Petitioners, *Robertson.*

ELY AND CLYDACH VALLEYS RAILWAY BILL.

Petition of TAFF VALE RAILWAY COMPANY.

15th July, 1873.—(*Before Mr. WYNN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Railway—Competition—Existing Competition made more effectual—Prolongation of Existing Line—Difference of Levels—Collieries—Agreement—Breach of Faith, alleged—Clause for Preventing Abstraction of Traffic—Engineering Details—Estimated Cost of Line—Limitation of Locus Standi urged in respect of—Practice—Prima facie Evidence—Agreement, production of—Breach of Agreement, asserted and denied—Onus probandi, on Petitioners—Evidence, must be original—Evidence in House of Lords inadmissible before Referees.

A short line of railway for mineral traffic was projected by an independent company, the bill providing that the line should be maintained and worked by the Great Western company. The new railway was a prolongation of an existing line, and would run nearly parallel to the Taff Vale railway, at the distance of between half-a-mile and a mile from this railway. Against a petition by the Taff Vale company alleging competition, it was urged (1) that the prolonged line merely made more effectual an existing competition; (2) that a difference of levels would preclude one railway from serving the same traffic as the other railway; and (3) that a clause introduced in the House of Lords would prevent the promoters from abstracting the mineral traffic of the petitioners:

Held, that the petitioners were entitled to a *locus standi*, not limited, as suggested, in respect of engineering details and cost of line. The petitioners also alleged that the construction of the proposed line, nominally by an independent company, really by the Great Western company, would contravene an agreement made between themselves and the Great Western company. They did not, however, put in the agreement, and the promoters denied that any agreement to this effect really existed:

Held, generally, that upon assertion by petitioners, and distinct denial by promoters, it is incumbent upon the former to offer *prima facie* evidence of the breach of faith which they allege. In the particular case, however, the petitioners were allowed an unlimited *locus standi*.

If the *locus standi* depend upon a question of fact, oral or written, evidence of the fact will be received; but the Court takes original evidence only, and therefore, where it was proposed on the part of the petitioners to read evidence given in the House of Lords, in proof of an allegation disputed by the promoters:

Held, that such evidence was inadmissible.

The bill proposed to incorporate a company and empower them to make a railway from the Ely Valley railway at or near its present terminus. The petitioners sought to be heard against the proposed line, on the ground of competition and alleged violation of an agreement by the Great Western company, who were to work the new line.

The objections urged that the agreement would not be infringed; and that it was utterly silent upon the arrangement alleged by the petitioners, who could not now add to a written agreement by oral testimony; and, moreover, that an independent company, not the Great Western company, were the promoters of the bill. It was also objected that the proposed line would accommodate traffic which could not be accommodated by the petitioners, and to which they could have no claim. Further, it was urged that the petitioners had no right to be heard upon engineering details, and the estimated cost of the proposed line, and that in the other House of Parliament the petitioners did not attempt to oppose the bill on these grounds.

Granville Somerset, Q.C. (for petitioners): I will read from the evidence taken in the House of Lords to show that the promoters' own witnesses admitted that competition would be caused by the making of this line, and that certain collieries now served by the Taff Vale company would be cut off from the Taff Vale railway.

Michael (for promoters): Evidence taken in the House of Lords cannot be read in this Court. (*Merioneth Railway Bill; Petition of Festiniog Railway Company*; 2 Cliff. and Steph. 182.)

Mr. RICKARDS: If the *locus standi* depends on a question of fact, we have been obliged to take evidence of the fact, but we take original evidence; we do not refer to evidence given in the other House.

Granville Somerset: The proposed line will be 2 miles 5 furlongs long, and will run parallel to our line at a distance of half-a-mile. I submit that a clear case of competition is shown upon the map.

Michael: The map does not show the inequalities of the ground, and the enormous difference of levels between the two lines.

Granville Somerset: Our second ground of opposition is that, though the bill is promoted nominally by an independent company, the real promoters are the Great Western company, and, therefore, the bill is a distinct breach of an agreement made between this company and the petitioners.

Michael (in reply): By prolonging this line, we are only making an existing competition more effectual, and this affords no ground for *locus standi*. (Smeth. 55.) Every inch of new railway may be said to create new competition because it induces persons to open collieries; but, in fact, it is here the same competition.

Mr. RICKARDS: Is it not possible that the prolongation of an existing line may tap a different source of traffic? We must assume that this line is laid out for the purpose of getting some traffic or other.

Michael: We cannot abstract the traffic of the collieries at present served by the Taff Vale company, for a clause, adopted in the other House, expressly prevents us from deviating to these collieries; and this line is promoted for the purpose of opening a new district, which cannot be served by the Taff Vale company.

Granville Somerset: We deny that the clause will protect us, and also that we are unable to serve this district.

Michael: Though on the map the two lines may appear to lie not far apart, the difference of levels is such that one railway may accommodate a district quite distinct from that reached by the other. As to the alleged breach of agreement, if this point were relied on, the agreement should have been put in; but it has not been put in, and you, therefore, have simply before you what appears in the petition, to which we give a flat denial. The *onus* is upon the petitioners to prove that there is any agreement precluding the Great Western, or any other persons, from applying for a line in this direction. We deny that there is any breach of faith, and had there been any attempt to prove the statements made on the other side, I should show that the line now proposed lies in an entirely different district from that to which the agreement relates.

Granville Somerset: The Court of Referees only want a *prima facie* case, and we say distinctly that we shall attempt to prove before the Committee our allegations as to the agreement.

Mr. RICKARDS: You say, "We want to be heard because the promoters have been guilty of a breach of a faith." They say, "We have not been guilty of a breach of faith." How are we to decide whether to give a *locus standi* upon that allegation without seeing the agreement?

Granville Somerset: If we allege an agreement, and the promoters admit that an agreement exists, it is not for this Court to go into the contents of the agreement. If the promoters said there was no such agreement it would be a different matter.

Michael: We say there is no agreement to the effect mentioned by the petitioners.

Mr. RICKARDS: If a petitioner says he is a landowner, and the statement is denied by the promoters, we must have proof that he is a landowner. If a petitioner says the bill infringes an agreement, and the promoters admit the agreement, but altogether deny the alleged infringement, we must have some *prima facie* evidence of the infringement, otherwise it would be easy for any petitioner to set up an agreement and allege a breach of faith in respect of it.

Granville Somerset: Our statement being met by their denial, I submit that we should be sent before the tribunal which will hear evidence on either side, and decide between us.

Michael: Our denial and the assertion of the petitioners are equally before the Court, and until our denial as to the agreement is displaced by *prima facie* evidence, the petitioners have no *locus standi* to assert that such an agreement exists.

Locus standi Allowed.

Agents for Bill, *Martin & Leslie.*

Agents for Petitioners, *Sherwood & Co.*

EVESHAM, REDDITCH, AND STRATFORD-UPON-AVON JUNCTION RAILWAYS.

Petition of GREAT WESTERN, STRATFORD-UPON-AVON, AND ALCESTER RAILWAY COMPANIES.

26th March, 1873.—(Before *Mr. ADAIR, M.P., Chairman*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER.*)

Railway—Competition—Joint Petition—S. O. 134
—["In what cases Railway Companies to be heard"]—*Railway Company, as Landowner—Unlimited locus standi of—Working Agreement—Landlord and Tenant—Representation.*

Three railway companies presented a joint petition, on the ground of competition, against a bill for the construction of a new line. The promoters admitted that as their line would cross by a bridge the railway of

one of the petitioning companies, the Great Western, this company were entitled to appear, but urged that their *locus standi* should be limited to the question of structural injury, or, assuming that an unlimited *locus standi* were allowed to the Great Western, the two other petitioning companies, it was contended, would be adequately represented by the Great Western, which worked by agreement the lines of both these companies :

Held, following the precedents in the construction of S. O. 184, that a landowning railway company or other corporation are entitled to an unlimited *locus standi* when their land is taken; and on the ground of competition all the parties to the joint petition were allowed to appear.

(*Per Cur.*) "For *locus standi* purposes, taking an inch is the same as taking an acre."

This was a joint petition by the Great Western, the Stratford-upon-Avon, and the Alcester railway companies, on the ground of competition, against the construction of a new line from Stratford-upon-Avon to a point joining the Midland railway south of Alcester. The line of the Alcester company, one of the petitioners, was a railway authorised but not constructed, and extending from Alcester to Bearley. The line of another petitioning company, the Stratford-upon-Avon, runs from this town to Hatton, near Leamington. Both these lines were or would be worked under agreement by the Great Western company. The question of competition turned mainly upon the apprehended abstraction of local traffic between these points. The *locus standi* of the petitioners was objected to, because the competition arising under the bill would not be of a nature entitling them to oppose it; and as to the Great Western company, it was objected that they were only entitled to appear against the provisions of the bill affecting their land and works, and not against the preamble and clauses of the bill generally.

Saunders (for petitioners) : The Great Western company have an unlimited *locus standi* against the bill, their land being taken. (*Caledonian Railway (Additional Powers) Bill*, 2 Cliff. & Steph. 256; and *Ryde and Newport Railway Bill*, *Ib.* 197.)

Thesiger, Q.C. (for promoters) : It is within the discretion of the Referees under the amended S. O. to limit the *locus standi* of a railway company whose land is touched; and the S. O. seems to have been altered to meet this very case.

Mr. RICKARDS : The Referees have decided that, notwithstanding the alteration in the S. O., a railway company, as a corporation possessed of land, stand on the same footing as any individual landowner or corporate landowner. The *locus standi* of landowners does not depend upon S. O. at all. We have always held that a cor-

porate body possessed of land has the same right of opposing on this ground as an individual owner; and the amendment of the S. O. has not affected this right, whether vested in an individual or a corporation.

Thesiger : All we do is to cross by a bridge the line of the Great Western company.

Mr. RICKARDS : For *locus standi* purposes, taking an inch is the same as taking an acre.

Saunders : Upon the question of competition, it is said that as the Great Western will be heard they will represent the two other petitioning companies, but this is, in effect, saying that a tenant is to be heard and not his landlord. These two companies own the lines worked by the Great Western; and the landlord must always have a more permanent interest than the tenant, though at the moment that interest may not be so much affected.

Thesiger (in reply) : No substantial competition will arise between the lines of the petitioners and the proposed railway; but assuming the existence of such competition, the Great Western will adequately represent the other two companies, and protect their interests. This point was decided in 1871. (*Alcester and Stratford-on-Avon Bill*, 2 Cliff. & Steph. 128.)

Locus standi of all the Petitioners Allowed.

Agents for Bill, Dorington & Co.

Agents for Petitioners, Young, Maples & Co.

FORTH BRIDGE RAILWAY COMPANY.

Petition of the CALEDONIAN RAILWAY COMPANY.

12th March, 1873.—(*Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Railway Bridge—Navigation—Apprehended Obstruction to — Owners of Navigation and Wharves—Deposited Plans—Deviation—Board of Trade.

A railway company which proposed to cross a navigable river by a fixed bridge was opposed by another railway company, claiming to be the conservators of the navigation, and owners of adjacent wharves, on the ground of apprehended injury to navigation and trade :

Held, that the petitioners had a *locus standi* against such parts of the bill as related to the construction of the bridge.

Besides the apprehended injury to navigation and trade, the petitioners complained of certain clauses in the bill affecting the construction of the bridge, which allowed, as they maintained, too great a deviation from the deposited plans

and sections, and left it to the Board of Trade to determine the width and height of the spans or openings of the proposed bridge.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) no running powers or facilities are sought in or over petitioners' lines; (3) the powers of the Forth and Clyde navigation company (incorporated in 1768, for the purpose of forming a canal for sailing vessels of 100 tons burden, between the Forth and Clyde, and since vested in the petitioners), were simply powers of removing rocks, and other obstructions to the free navigation of those rivers, and of the river Carran within certain points, and neither the canal company nor the petitioners had nor have exercised any rights or powers over the Firth of Forth, nor have they been in any sense constituted the conservators of the navigation of the Firth of Forth; (4) the petitioners have no such interest in the provisions of the bill as entitles them to be heard.

Venables, Q.C. (for petitioners): Our opposition is confined to the part of the bill relating to the bridge across the Forth. We ask that the promoters may be bound to their plans and sections as deposited. Our objection arises under the following clause of the bill:—"In constructing the railways and works authorised by this Act, the company may deviate from the line and levels defined on the deposited plans and sections to such extent as they think fit, not exceeding laterally the limits of deviation defined on the deposited plans, and not exceeding vertically the limits prescribed by The Railways Clauses Consolidation (Scotland) Act, 1845, except so far as relates to railway No. 1, with respect to which the company may deviate to any extent they think fit from the levels as referred to the common datum described on the deposited sections not exceeding 10 feet, or so far as relates to the bridge across the Forth, such extent as may be prescribed by the Board of Trade. Notwithstanding anything contained in this Act or the deposited plans, the number and position of the piers of the bridge across the Forth, and the width and height of the spans or openings between the piers, shall be such as shall be prescribed by the Board of Trade." We do not object to the plans and sections as deposited, but we do object (1) to the excessive deviation authorised, and (2) to any deviation from the plans, and its being left to the Board of Trade to determine as to the construction of the bridge. We claim a *locus standi* (1) as owners of the Forth and Clyde navigation, with powers to remove obstructions between Grangemouth and the sea; (2) as owners at Grangemouth, with power to remove obstructions there; and (3) as owners at Alloa of wharves and harbours. We say that one of the powers transferred from the company of proprietors of the Forth and Clyde navigation to us was the statutory power of removing at all times as we may think necessary any obstruction whatever to the free navigation of the Firth or river of Forth, at any place between the canal and the sea. The owners of the navigation were recognised as conservators of the Forth in an agreement of 1865 between

them and the North British and Edinburgh and Glasgow railway companies with reference to a bridge across the Firth. The present bill is promoted in the interest of, and substantially by, the North British railway company, the greater number of parties named in the bill being directors of that company, and the object of the bill being expressed to be to render continuous the route of that company by means of a connecting line over the Firth of Forth to be worked by them. If the levels and width of the bridge be lessened, as they might be under the bill, the navigation would be seriously obstructed, and our interests prejudicially affected. How can the promoters now deny that we are the conservators after the agreement of 1865? At any rate, we have power to remove obstructions. The objections do not say a word about our position as owners of wharves and a harbour at Alloa, which alone would give us a *locus standi*. *Fareham and Netley Railway Bill, 1865* (Smeth. 120); *Severn Junction Bill, Petition of Corporation of Tewkesbury* (Smeth. 168); *North Eastern Railway Bill* (2 Cliff. & Steph. 149); *Isle of Wight and Cowes Railway Bill, Petition of Magistrates of Newport* (Ib. 211); *Bradford Canal Bill, Petition of Aire and Calder Navigation* (Ib. 178); *Severn Tunnel Railway* (Ib. 245).

Denison, Q.C. (for promoters): If the petitioners are conservators of the Firth of Forth, they must show that the place where the bridge is to be put is the river and not the sea. The language of the agreement of 1865 proves nothing. The Board of Trade are conservators, and there cannot be two sets of conservators. As to the right of the petitioners as owners of wharves at Alloa, and the cases cited on that point, the Board of Trade had not in those cases the power which they have here. In the case of the *Severn Junction* there was no clause giving power to the Board of Trade when the bill came before the Referees. Here the powers must necessarily be sufficient for proprietors of wharves at Alloa. Ships of war now pass the proposed site of the bridge, and therefore the Board of Trade, representing the Admiralty, will certainly see that the openings of the bridge are wide enough and high enough to allow vessels to go to the wharves at Alloa. By clause 7 the Board of Trade will be the tribunal to hear the petitioners, who, I admit, should be heard somehow or other. As to height and width of spans of the bridge, the Board of Trade are a better tribunal for such an inquiry than a Parliamentary Committee, who have no machinery for hearing the public or for making inquiries.

Locus standi Allowed against such parts of the Bill as relate to Construction of the Bridge.

Agents for Bill, Simson & Wakeford.

Agents for Petitioners, Grahames & Wardlaw.

GAS LIGHT AND COKE COMPANY BILL.

Petitions of (1) EDWARD BLAKE and OTHERS; (2) ALEXANDER CULLEN and OTHERS; and (3) the VESTRY of ST. MARTIN'S-IN-THE-FIELDS and OTHER VESTRIES and DISTRICT BOARDS OF THE METROPOLIS.

24th March, 1873.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—Metropolitan Board of Works—Consumers—Vagueness of Allegations in Petition—Vestries—District Boards—Local Authorities—Representation—Distinct interest—Metropolis Gas Act, 1860—Metropolis Management Act, 1855—Increase of Capital—Purchase of Coal Mines—Price of Gas—Dividend—Reserve Fund—S. O. 130—[Petitions to specify grounds of objection distinctly.]

A bill to enable a gas company to raise further capital for the purchase or lease of coal mines and other purposes, was opposed by (1 and 2) private consumers, and (3) vestries and district boards supplied by the promoters. The petitioners claimed to be heard in addition to the Metropolitan board of works, on the ground that the statutory right of the Metropolitan board of works to protect the interest of consumers in respect of price, quality, &c., did not exclude either consumers or vestries from appearing against a gas bill which peculiarly affected the rights of parishes, districts, or individuals. The petitions (1 and 2) of private consumers were objected to (*inter alia*) on account of the absence of specific allegations respecting the injury, if any, inflicted on the petitioners by the bill:

Held, that in the case of the private consumers this objection was fatal, and *locus standi* therefore disallowed; but that, this objection not applying to the petition of the vestries and district boards, they had a right to appear, as well as the Metropolitan board of works.

The bill was one "to authorise the Gas Light and Coke company to purchase or lease and work coal mines, and for this purpose to raise further capital, and also to confer on them additional powers, and to amend the Gas Light and Coke Companies Act, 1868, and the several Acts altering and amending the same, and for other purposes." It was opposed on the ground that it would, by unnecessarily augmenting the capital of the company, retard the reduction of

the price of gas, and on the general grounds that it was framed in such a manner as to afford insufficient protection to consumers, principally by placing no proper limits to the price to be paid for gas supplied by promoters.

The *locus standi* of Edward Blake and others was objected to, because (1) the petitioners did not allege or possess sufficient interest in the objects of the bill; (2) they alleged that they had received notice of an intention to raise the price of gas, but the bill contained nothing relating to the price of gas; (3) they were not lessees, owners, or occupiers of any lands affected by the bill; (4) the petition was only signed by 80 out of 60,000 consumers, and did not even purport to represent the general body, or to have emanated from a general meeting of consumers; (5) the petitioners did not allege that they were injuriously affected by the bill. Similar objections were taken to the *locus standi* of Alexander Cullen and others, and this petition was signed by 38 consumers. The *locus standi* of the vestry of St. Martin's-in-the-Fields and other vestries and district boards of the metropolis was objected to, because (1) the petitioning districts only form a small part of the metropolis and the powers exercisable by them are of too limited character and do not entitle them to appear as the municipal or other authority having the management of the metropolis, nor do they allege themselves to be such authority, nor to represent any such special interest; (2) the petition is too vague and insufficient, and does not show specific ground for petitioning; (3) one paragraph deals with the price and purity of gas, which the bill does not touch; (4) and so of the statements concerning amalgamation; and (5) the result of raising and applying further capital; (6) various allegations in the petition are directed against the internal management and affairs of the company with which the petitioners have no concern; (7) the petitioners ask for the insertion of certain clauses in the bill which relate to maximum impurity, &c., which are all regulated by existing statutory provisions; (8) petitioners are not owners, &c., of property affected by the bill; (9) the Metropolitan board of works are the proper municipal authority to petition and to protect the interests of consumers, and have already petitioned; (10) no grounds for a hearing exist according to practice.

Pike, Parliamentary Agent (for petitioners 1 and 2): The two petitions may be conveniently taken together, and in accordance with practice the bill must be taken as it is printed and not as proposed to be amended. The petitioners have received notice to the following effect: "That from the 1st day of January next the illuminating power of gas supplied will be increased to 23 candles, the price will be 5s. 5d. per 1,000 cubic feet, or such other price as shall be approved by the Board of Trade.—Horseferry Road, Westminster, 16th December, 1872." We strongly object to this as a breach of an implied contract with the public. By clause 7 of the bill it is proposed to repeal the Statute of Limitations. By the 8th clause it is proposed that section 110 of The Gas Light and Coke Companies' Act, 1868, should be read as if the

words "The Metropolitan Gas Act, 1860," were omitted. We object to any such omission. The whole question of gas legislation was considered and settled by Parliament in 1860 and 1868. We also object to certain other clauses, and say we are not sufficiently protected. The petitioners have a distinct interest in the price of gas they consume.

Sargood, Serjt. (for promoters): We do not say you have no interest in the price of gas—we say you have no interest in the objects and provisions of the bill.

Pike: Although there may be nothing in the bill affecting the price of gas, yet the omission proposed by clause 8 affects the price by ridding the company of obligations. Then the bill proposes the investment of capital in coal mines. We object to this speculative investment, which, if an unfavourable one, must tell upon the price of gas. The Metropolis Gas Act of 1860 was the result of mature consideration. It exempted certain companies from its operation, but not that of the promoters. Clause 8 is an attempt to obtain exemption for themselves. There is nothing to prevent them from charging any price they like, with the sanction of the Board of Trade.

Mr. RICKARDS: Does the Metropolis Gas Act, 1860, impose any restriction or make any provision with regard to price?

Pike: Yes; section 40 of the Act of 1860 does.

Sargood: That was repealed in 1868.

Pike: As regards the number of inhabitants petitioning, I refer to the *Ryde and Newport* case (2 Cliff. & Steph. 297), and with regard to our not alleging a specific grievance, to the *Caledonian* case (1 Cliff. & Steph. 126). A large interpretation is to be given to the S. O. requiring petitions to contain specific grounds of objection.

Cowie (for the vestries): I represent four vestries and five boards of works and local authorities, and we allege that the powers and provisions of the bill are not only injurious to us, but contrary to public policy. We are supplied with gas by the Gas Light and Coke company under the provisions of the Metropolis Gas Act, 1860, and of the Gas Light and Coke Companies Act, 1871, and we are all materially interested in the price and purity of the gas supplied. By various Acts authorising amalgamation with other gas light companies, the company now light a very large part of the metropolis, and its consumers are obliged to pay such a price as to yield a dividend of 10 per cent. on the capital. Thus, the raising of any further capital will have the effect of retarding a reduction in the price of gas, and will be injurious to us and all consumers. We further ask for clauses prescribing the maximum impurity of gas, testing places, lighting, &c., and we urge that no dividend on any new capital should exceed 7 per cent. The Metropolis Local Management Act (18 and 19 Vic., cap. 120, sec. 90), gives the bodies I represent control (*inter alia*) over the public lighting of the parishes, and the Metropolis Gas Act, 1860, section 4, defines the local authority as including the Metropolitan board of works, and the vestries and district boards. Our interest in the gas supply within our respective districts being thus clear, we say that

the monopoly enjoyed by the promoters will be aggravated by this bill, which will further enable them to apply to foreign purposes any capital they have been authorised to raise. The interests of the Metropolitan board of works are distinct from our own. There is nothing to prevent that board from retiring from opposition to-morrow. We have no control over them. In the *South London Gas Bill* (2 Cliff. & Steph. 220), vestries and boards of works were allowed a distinct hearing; and also in the *Gas Light and Coke Company Bill*. (2 Cliff. & Steph. 45.) Clause 8 of the bill would relieve the company from the operation of the Metropolis Gas Act, 1860, and deprive us of its benefit. There are provisions in that Act still relating to us as local authorities, which would be affected by this clause.

Sargood (in reply): The petitions of (1) Blake and others, and (2) Cullen and others, deal with price, and the petitioners are trying to get Parliament to settle the price instead of the Board of Trade as provided by existing legislation. Our bill does not affect the Statute of Limitations, and if it did, the petitioners do not allege that they would be injuriously affected by it. Their allegation that we cancel part of section 110 of the Metropolis Gas Act, 1860, does not give them a *locus standi*, for they do not show that it would injuriously affect them. As regards the vestries, their main grievance is the price and illuminating power, and the bill does not touch either. The vestries only come here as the consumers, and the Metropolitan board of works are the proper parties to represent consumers. There is nothing in our bill to affect them differently to all other local authorities. We propose, in clause 8, to omit the words, "The Metropolis Gas Act, 1860, or," contained in section 110 of our Act, because that clause, as it stands, is, by an oversight, inconsistent with another section in the same Act. The Metropolitan board of works are the proper parties to discuss this point. The vestries have no distinct interest from the Metropolitan board. The Corporation of London within, and the Metropolitan board without the city, are the proper representatives both of vestries and consumers. The Metropolitan board petition, and we do not object to their *locus standi*.

Mr. RICKARDS: Mr. Cowie referred to two sections of the Act of 1860, protecting the local authorities, a protection which, he says, local authorities will lose if you make the Act inapplicable to the company.

Sargood: They do not lose the benefit of the Act of 1860; we only repeal one clause of it. We come to amend this clause, and apply the legislation of 1868 instead of 1860 for the benefit of consumers. The only interest vestries profess to have, distinct from ordinary consumers, is as local authorities having power over the public thoroughfares.

Cowie: Lighting and paving.

Sargood: There is no pretence that this bill interferes with those matters.

Mr. RICKARDS: The public lighting may be more expensive. The petitioners say that they pay large sums to the company for lighting the public lamps.

Sargood: If you thought it right to give them a limited *locus standi* against clause 5 (formation of reserve fund), and clause 6 (deficiency in dividend to be made good from reserve fund), I should not object. As to the right of consumers to a separate hearing from the local authorities, I refer you to the *Accrington Gas* case (1 Cliff. & Steph. 123).

Cowie: That case does not apply here. It was one of insufficient representation. We represent the whole of the ratepayers in our districts.

The CHAIRMAN: The *locus standi* of Edward Blake and Others is *Disallowed*. The *locus standi* of Alexander Cullen and Others is *Disallowed*. The *locus standi* of the vestry of St. Martin's-in-the-Fields and other Vestries and District Boards is *Allowed*.

Agents for Bill, Wyatt & Co.

Agent for Edward Blake and Others, and for Alexander Cullen and Others, Gough.

Agents for the Vestry of St. Martin's-in-the-Fields, &c., Dangerfeld & Fraser.

GLASGOW CORPORATION WATER BILL.

Petition of (1) WILLIAM SMITH DIXON and OTHERS.

12th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.

Water Supply—River—Weir and Lock—Interference with Navigation—Riparian Owners—Continuing Nuisance to—Previous Legislation—Extension of Time Bill.

Under a previous Act, a weir and lock across the river Clyde were to be maintained until the completion of certain waterworks. The present bill extended the time for the completion of these works. The petitioners, who were owners of wharves, &c., on the banks above the weir, opposed the bill on the ground that it continued an existing nuisance by countenancing the prolonged existence of the weir, which was an obstruction to the navigation of the river:

Held, that petitioners were entitled to a *locus standi*.

The promoters of this bill desired (*inter alia*) further time before removing a dam or weir across the Clyde. The Clyde trustees were under statutory obligation to keep this weir in repair until the works of the Glasgow corporation were completed.

The petitioners were (1) Messrs. Dixon, proprietors and occupiers of lands and estates situate on the river Clyde; (2) persons interested in the navigation thereof above the bridge, called Hutchesontown or Albert Bridge, Glasgow; and (3) the Royal burgh of Rutherglen.

Their *locus standi* was objected to, because (1) the bill does not interfere with any of their property or rights; (2) it does not contain any provision as to the weir or lock referred to in the Glasgow Corporation Waterworks Amendment Act, 1866, nor will it affect the interests of the petitioners arising under that Act, or in regard to this weir; (3) the bill does not interfere with any statutory provision for the benefit of the petitioners, who (4) do not state any grounds entitling them to be heard according to practice.

Rodwell, Q.C. (for petitioners): We possess certain rights and privileges which have been the subject of legislation in former years, and are affected by the bill. We are riparian owners of wharves, &c., on the banks of the Clyde above a certain weir, which is an obstacle to the navigation of the upper river, and thereby detrimental to our interests. The Glasgow Bridges Act, 1845, and Glasgow Corporation Waterworks Amendment Act, 1866, both recognise the fact that this weir is injurious to the navigation, though it is needful temporarily for purposes connected with the waterworks, and they direct that it shall be removed as soon as it is not needed for the working of the water supply. By the Act of 1866, the period for the construction of the works thereby authorised was limited to seven years, three months after which the weir should be removed. By the present bill the time is to be extended for two years longer, and consequently the injury caused by the weir will be continued. We have always regarded the weir as an illegal obstruction only tolerated by the Legislature for particular purposes, and for a limited time, and we are as much entitled to be heard against the continuance of a nuisance as the creation of one.

Clerk, Q.C. (for promoters): The petitioners say we come here to perpetuate a nuisance. Parliament has said, "This nuisance, if such it be, shall continue till your reservoirs are constructed." A period of seven years was given us for the construction. We are not bound to remove the weir at the expiration of seven years, but that time was specified as the time within which to make the new reservoirs. On their completion and not till then was the weir to be removed.

The CHAIRMAN: The petitioners say that the continuance of the weir which you seek to perpetuate by asking for further time to carry out the works is a nuisance to them, and that they have a right to be heard against the continuance of that nuisance.

Clerk: On such a ground they have no *locus standi*. If so, in a case of a railway company applying for extension of time, any one might be heard against the extension to whom the completion of the line would be a benefit.

The CHAIRMAN: The *locus standi* of William Smith Dixon and others is *Allowed*.

Petition of (2) OWNERS AND OCCUPIERS OF FACTORIES.

Water Supply—Previous Legislation, Arrangement by—Varied by Bill—Extension of Time—Delay in Completing Works—Compensation—Period of Payment, Postponed by Bill.

In 1866 an Act was obtained for the construction of certain waterworks which were to be completed in seven years. A bill was now promoted extending the time for completing the works to 12 years. The petitioners, owners of factories to be supplied by the waterworks, and, meanwhile, deriving their water supply from the river free of cost, became bound under the Act of 1866 to pay certain specified rates for the water during 15 years after the completion of the works, and on the other hand were to receive £5,000 from the promoters as compensation three months after such completion. They now alleged that in these respects the proposed extension of time would prejudicially affect them :

Held, that the bill did not propose such a change in the status of the petitioners as entitled them to a *locus standi*.

The *locus standi* of these petitioners was objected to on the grounds taken against petition (1).

Bidder (for petitioners) : The Act of 1866 was obtained by express agreement and arrangement with us, and contained clauses for our protection.

The CHAIRMAN : I gather from the petition that your clients do not wish the weir to be removed until the works which are to be provided under the Act of 1866 in the place of the weir are finished. These works have not been completed, and this bill is to extend the time for their completion ?

Bidder : Yes ; in other words, the promoters are trying to vary the provisions of the Act of 1866, designed for our protection. The waterworks which were to supply us were to have been completed in seven years. Now they ask to make that period 12 years, although the weir is in such a state of disrepair that it is in danger of being swept away by floods, in which event our water supply would be most injuriously affected. We have spent much money in preparation for a new system of supply, and under the Act of 1866 we are entitled to £5,000 compensation, to be paid three months after the works are completed. If the bill passes, the period of payment will be postponed for five years, and there is no proviso for the payment of interest. Again, we became bound under the Act to pay certain specified rates for 15 years from the time of receiving the supply, whether we took the water or not. This obligation becomes

much more onerous if the 15 years begin to run five years after the time agreed on, for meanwhile works may be closed, the course of trade may alter, and so large a supply of water may not be required. Whenever a person or company enters into an arrangement, sanctioned by Parliament, and wants to modify that arrangement by subsequent legislation, the other party to the arrangement has a right to be heard. *East and West Junction Railway Bill* (2 Cliff. & Steph. 141).

Clerk, Q. C. (for promoters) : We do not injure the petitioners by delay. On the contrary, they will be benefited by delay, for, whereas at present they get their water supply from the river free of cost, when our works are finished they will have to pay for it. The £5,000 only becomes payable upon the completion of our works, and it is for Parliament to say when those works should be completed. The money the petitioners have spent was spent at their own risk. As to the case quoted, it stands on its own merits. No one can oppose an extension of time bill who is not clearly injured by it, and there is no injury here. If the weir is in bad order, the petitioners should proceed against the Clyde trustees, upon whom devolves the duty of maintaining it.

The CHAIRMAN : The *locus standi* of Owners and Occupiers of Factories is *Disallowed*.

Agents for Bill, *Loch & MacLaurin*.

Agents for both Petitioners, *Grahames and Wardlaw*.

GREAT WESTERN RAILWAY BILL.

Petition of (1) J. W. KNOLLYS.

23rd April, 1873.—(*Before Mr. BRISTOWE, M.P., Chairman ; Mr. BICKARDS ; and Mr. BONHAM CARTER.*)

Railway—Landowners—Rails alleged to be illegally laid—Statutory authority sought to confirm previous alleged wrong-doing—Road—Footpath—Level Crossings—Right of way—Access to building land interfered with—Easement—Surface, user of—Right to Solum—Claim to land—Onus probandi—Prima facie Evidence of Title—Right to unlimited locus standi waived by Petitioner.

A railway company promoted an omnibus bill which sought powers, *inter alia*, to lay down rails on the level of two roads, and also to stop up a lane and footpath, appropriating a portion of the soil to the purposes of the company's undertaking. It appeared that, with the sanction of the road authority, but without statutory powers, rails had already been laid down across these roads. The bill was opposed by a landowner, who

had not received the usual statutory notice, on the ground that one of the roads thus crossed on the level furnished the only direct access to valuable property of his, which would be injuriously affected by such crossing, and that a right of way expressly reserved to him by the company would or might be abolished; while, as to the portion of the lane and footpath to be appropriated by the railway company, he alleged that the ownership of the soil was vested in him, the company having previously purchased from him merely a license to use the land for the purposes of a footpath. Upon *prima facie* evidence of title as alleged:

Held, that the petitioner (who waived his right as a landowner to an unlimited *locus standi*) was entitled to be heard against the clauses and preamble relating to the level crossings and the appropriation of the land in dispute.

The *locus standi* of the petitioner was objected to, because (1) the public roads, footpaths, or highways in question (called Vastern Lane and King's Meadow Road) are not under the jurisdiction or management of the petitioner as local authority, road authority, or otherwise; (2) he has no such interest in these roads as entitles him to a hearing; (3) his allegation that he is the owner of the *solum* of Vastern Lane and the lands on either side of it, and of part of the soil of King's Meadow Road is untrue; (4) the bill contains no provisions which interfere with the petitioner's lands or other property or interests; (5) the petitioner discloses no ground of opposition entitling him to a hearing.

Round (for petitioner): Mr. Knollys might claim to oppose the whole bill, but asks only to be heard against the clauses which affect him (24-27). Clause 24 empowers the company to make level crossings over Vastern Lane, at Reading, and over the road leading to King's Meadow. The clause adds, "And they may maintain and use the rails already laid by them across and on the level of Vastern Lane and the King's Meadow Road, respectively." So that the company are seeking statutory authority for that which we contend they are doing illegally. Clause 25 requires the company to provide gates to protect the crossings, and subjects the crossings to such regulations as may be agreed on from time to time between the corporation of Reading and the company. Clause 26 authorises the company and the corporation, upon the completion of a certain new road, to stop up a portion of Vastern Lane, and also authorises the company to appropriate a portion of the lane; and under clause 27, the corporation and the company may enter into agreements relating to Vastern Lane and King's Meadow Road. Mr. Knollys is the owner in fee of Vastern Lane and Vastern footpath, and is tenant for life of a portion of the soil of King's Meadow Road. He

is also the owner of valuable building land situated along the Vastern footpath. From time to time he has sold to the railway company portions of his estate near Reading, and, by a deed of 1841, the company granted to him the right of way under the railway, and across a piece of land then conveyed by him to them; this was done for the purpose of affording convenient access to other lands belonging to the petitioner along the Vastern footpath. Both King's Meadow Road and Vastern Lane give access to land belonging to Mr. Knollys. The company have already, wrongfully, laid down rails across the road over which a right of way was secured to Mr. Knollys under the deed of 1841, and also across Vastern Lane, Vastern footpath, and King's Meadow. If this wrongdoing is now confirmed, the value of our building land will be materially depreciated by such obstructions to the approaches, and Mr. Knollys will lose direct access from the centre of the town to a large portion of his building land, the only other access being a long and circuitous one. But the soil of Vastern Lane and footpath is ours. [*Deeds produced.*]

Mr. RICKARDS: Are we asked to try the title to these lands?

Rodwell, Q.C. (for promoters): We bought it from Mr. Knollys 30 years ago, and have exercised ownership over it ever since. The *onus probandi* is on the person setting up a title under such circumstances.

Round: The railway company bought certain land from Mr. Knollys in 1838, including what was then Vastern footpath; but in the following year the railway company, for their convenience, appropriated that footpath, and, by arrangement with Mr. Knollys, substituted the existing footpath, which he allowed to be made on his freehold at the expense of the company. He granted an easement to the company, but never parted with the freehold, and never received a shilling for it.

[Agreement of 1839 put in. It recited the desire of the railway company to divert and alter the then existing footpath, and that Mr. Knollys had permitted them to carry the same across his land; and the company accordingly undertook to form the footpath, to execute certain works, and pay Mr. Knollys £254 for certain law expenses, with a further £10 for the costs of the agreement.]

Round: Even apart from the appropriation of our land, the stopping up of our right of way and the level crossings on the two roads would give us a *locus standi*.

Rodwell (in reply): An easement will not give a *locus standi* in a case like the present. As to the agreement of 1839, it must be assumed that the railway company would not pay £254 unless they got something in return. I do not say it is such a conveyance as would pass this piece of land from A to B, but it would pass the property from the owner to the company for the special purpose of forming this public road.

Mr. RICKARDS: Is it not merely a license to use the soil for the formation of the road? And supposing the soil to remain the petitioner's, then, under clause 26, the company may appropriate it to the purposes of their undertaking,

i.e., they may make the land their own property.

Rodwell: Mr. Knollys gave up to the railway company all his rights to the surface and the user of this land for the purpose of the substituted footpath; and his only object in asking for a *locus standi* now, is to enable him to drive a better bargain with the railway company, and also with the local board of Reading.

Locus standi Allowed against Clauses 24 to 27 inclusive, and so much of the Preamble as relates thereto.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioner, *Lindsay & Co.*

Petition of (2) SEVERN COMMISSIONERS.

Railway—Navigation Commissioners—Navigation Tolls, apprehended loss of—Injury alleged, too remote—Canal—Diversion of Traffic—Competition—Mortgagors—Mortgages—Depreciation of Securities.

Practice—Representation—Promoters represented on petitioning body—Common Seal.

A bill proposed to make a railway by the side of a canal, which communicated with and brought considerable traffic into the river Severn. The Severn commissioners, who levied tolls for the maintenance of the navigation upon vessels frequenting the river, objected that this railway would injure the trade of the canal, and so diminish the river traffic and navigation tolls, while it would also injure the canal company, the mortgagees of these tolls, by depreciating their security. It was, however, answered that the apprehended depreciation of the security was not the affair of the petitioners but of the mortgagees, who had petitioned in their own behalf, and whose *locus standi* was not objected to; and that the only real competition (if any) was between the proprietors of the canal and the promoters:

Held, that the interests of the petitioners were not affected in a sufficiently direct manner by the competition which would arise under the bill, to entitle them to a *locus standi*.

In a case where the promoters, a railway company, had three representatives upon the petitioning body, composed of 33 members, it was urged on behalf of the latter that the company, by their representatives, must be held to have concurred in the petition and to be bound by the common seal:

Held, that this was not such a representation as precluded the promoters from objecting to the *locus standi* of the petitioners.

The *locus standi* of the petitioners was objected to, because (1) they suggest that the making of the railway would cause traffic to be diverted from the Severn, and consequently the tolls receivable by them will be reduced, in the amount of which the public at large are greatly interested, but the petitioners do not represent the public or any portion of them; (2) as to the alleged hardship to the mortgagees, the petitioners cannot be heard on behalf of their mortgagees, or on behalf of their own interests in this matter; (3) no property, rights, or interests of theirs are interfered with; (4) they allege no ground of competition entitling them to be heard according to practice.

Pembroke Stephens (for petitioners): The promoters cannot be heard in opposition to our *locus standi*, because they themselves elect three members on the Severn commission, and therefore have concurred by their representatives in this petition. The rule that petitioners, being members of the body who promote the bill, cannot be heard against that body, must apply also in cases where the promoters are members of the petitioning body.

Rodwell, Q.C. (for promoters): The commission consists of 33 members, three only of whom are Great Western members.

[*Objection over-ruled.*]

Stephens: Railway No. 1, will run for the greater part of its course close alongside the Staffordshire and Worcestershire canal which communicates with the Severn at Stourport, and along this canal a large amount of traffic passes to and from the Severn. The railway will interfere and compete with the canal, and thereby abstract traffic which the canal now carries to the Severn. Thus it must diminish our tolls, as the canal is a great feeder to our navigation. Our interests are identical on this point with those of the proprietors of the canal. We have borrowed large sums of money from the canal company, and if our tolls are diminished by this bill, their security will necessarily be impaired. The Great Western railway were parties to previous Acts by which we raised money, yet they are now seeking to take away this valuable traffic from us, and so to assail the only fund available for the repayment of the money borrowed.

Mr. RICKARDS: That is the concern of the mortgagees.

Stephens: It is our concern also, because we are liable to the extent to which the guarantee of the Great Western railway company does not apply.

Mr. RICKARDS: Your real case—and a very good case if you can make it out—is that your income may be diminished.

Stephens: We allege that most distinctly in our petition. Our case is stronger than that of the petitioners in the *Hereford and Gloucester Canal Bill* (2 Cliff. & Steph. 29). The traffic on the Severn, apart from that of the canal, will

suffer by the competition. Anything that comes from the Staffordshire and Worcestershire canal may only go two miles on it, while it may go 20 miles on the Severn.

Rodwell (in reply): Admitting that the railway may interfere with the traffic of the canal, that does not give the Severn navigation trust a right to be heard. In the *Hereford and Gloucester Canal* case the promoters sought to remove a link in the chain of the navigation, so destroying the current of traffic. The Staffordshire and Worcestershire canal petition in this case and their *locus standi* is not objected to. The only competition is between the feeder to the Severn and the railway: the results to the Severn commissioners are too remote. As to finance, the real parties affected by this bill are not the borrowers but the lenders, who are the canal company. Moreover, the Great Western company are bound to guarantee a certain revenue to the Severn commissioners; so, in injuring them, we should only injure ourselves.

Locus standi Disallowed.

Agents for Petitioners, Dorington & Co.

Petition of (3) GLYNCORRGW COLLIERY COMPANY, LIMITED.

Railway—Dock and Railway Company—Purchase of Undertaking by Railway Company—Amalgamation—Colliery Owners Working Mineral Railway—Sidings—Tolls, alleged excessive—Traders and Freighters—Previous Legislation—Railway rates, already authorised, attempt to reduce.

The Great Western railway company proposed to buy up, and merge with their own undertaking, the dock, railway, and works of a floating Dock company. The bill was opposed by colliery owners, who worked a mineral line, and whose traffic, in passing along this line to the dock railway, was compelled to use a siding belonging to the Great Western company. The petitioners complained that they now had to pay a much higher rate for coals carried on this siding than was authorised by the Dock Company's Act, and charged for the use of the dock railway. They therefore asked to be allowed to urge upon the Committee an equalisation of rates by reducing those of the Great Western to the scale of the other amalgamating company. The petitioners also claimed to be heard as traders and freighters, as they carried coals from other collieries, besides their own, along their mineral line to the docks; but their petition did not state that they were traders and freighters:

Held, that under these circumstances, no change in the existing authorised tolls and rates being proposed by the bill, the petitioners could not be heard to complain of previous legislation, and to claim a reduction of such rates.

The *locus standi* of the petitioners was objected to, because (1) their rights, interests, or property are in no way affected; (2) they complain not of the transfer of the floating dock to the promoters, but of the rates they are obliged to pay for passing over a siding belonging to the promoters on their way from the mineral line which they work to the docks; but that is not a ground of objection entitling them to be heard; (3) they do not allege that they are traders and freighters over the promoters' railway, or that they represent any class of such traders and freighters, and, therefore, they cannot be heard with respect to tolls and charges; (4) the bill contains no provision with respect to tolls or charges entitling them to be heard; (5) the petitioners allege no ground of objection entitling them to be heard according to practice.

Thomas (for petitioners): The promoters propose to acquire the whole undertaking of the Briton Ferry floating dock company, and to absorb the railways of the dock company. We own a colliery at the head of the South Wales mineral railway, and we work this mineral railway, provide the plant and rolling stock, and carry over it a considerable tonnage of coals—not only our own but other people's coals—for shipment at the docks. We therefore not only work the line, but we are traders and freighters.

Mr. RICKARDS: You do not say that you are.

Thomas: The sidings of the Great Western railway, contiguous to their Briton Ferry station, intervene between the dock company's railway, and our railway, and we are obliged, in order to pass to and from the docks, to pass over a certain portion of such sidings. The dock company were only authorised by their Act passed in 1851, to charge, as a maximum toll for the conveyance of coal upon their railway, 1½d. per ton without, and 2d. per ton with, locomotive power; whereas, for the use of the siding which we are obliged to traverse for a quarter of a mile, in passing from our line to the dock railway, the Great Western company charge 4d. per ton. We say that such a toll is excessive, and a great hindrance to trade; and before the Great Western are permitted to acquire the undertaking of the dock company, we ask to be heard in order to get this toll reduced to the maximum toll charged on the dock company's line. According to Parliamentary usage, in all cases of amalgamation, surrounding lines are entitled to be heard to ask for a revision of rates; and in this case we not only use the Great Western siding, but the dock and railway which are the subjects of amalgamation. If it is objected that we are only one trader, the answer is that we really represent a class, as there is no one else

in the district, except the small collieries now springing up, whose traffic we work.

Rodwell, Q.C. (for promoters) : The petitioners are not traders and freighters. They are merely persons who work the South Wales mineral railway. The constructors of that railway knew that to get to the docks they would have to use a portion of the Great Western system, and would be subject to this 4d. toll. The petitioners are not in any way affected by this bill, and all they complain of is an excessive charge already authorised by Parliament, and not arising under the bill.

The CHAIRMAN: The colliery company work the mineral line under a lease?

Thomas: Yes; they also own more than three-fourths of it as shareholders.

Locus standi Disallowed.

Agents for Petitioners, *Baxter, Rose, & Norton.*

HARROW GAS BILL.

PETITION OF CONSUMERS OF GAS, BEING MASTERS OF HARROW SCHOOL AND OTHER PERSONS RESIDING AT HARROW.

24th March, 1873—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—Purchase of Undertaking—Alleged Excessive Capital—Masters of Harrow School—Consumers—Representation—Local Board—Outside Petitioners—Public Meeting—Practice—Question not raised in Petition or Objections—Not entertained by Court.

A bill, promoted to incorporate a gas company and raise capital for the purchase of gas works from a private individual for the supply of Harrow, was supported by the local board of the district, and opposed by 200 out of 260 consumers, being masters of Harrow school and others. Most of the petitioners resided within the district under the jurisdiction of the local board, but a few were persons residing outside that jurisdiction, and both classes of petitioners urged that the capital sought to be raised by the bill was in excess of what was requisite, and that the purchase would be disadvantageous to the district to be supplied:

Held, that, notwithstanding the support of the bill by the local board, the petitioners representing consumers were entitled to a hearing.

Where a statement of fact made by counsel in argument was denied on the other side, the Committee declined to go into it, there being no allegation on this point in the petition or objections.

The *locus standi* of the petitioners was objected to, because (1) they were not the municipal or other authority in Harrow, and the local board of health for the district of Harrow had petitioned in favour of the bill; (2) the petitioners did not represent the inhabitants or consumers of gas in Harrow, or the district proposed to be supplied; (3) there were no grounds for a hearing according to practice.

Richards, Q.C. (for petitioners) : The petition represents the intelligence and respectability of Harrow. It is signed by the masters of Harrow school and other residents in Harrow. We represent 200 out of 260 consumers. No doubt in the *Accrington* and *Aberdare* cases (1 *Cliff*, and *Steph.* 111-12 and 123-4) the Referees disallowed the *locus standi* of consumers as against the local board, but in the *Alliance Gas Consumers'* case (2 *Cliff*, and *Steph.* 176), consumers were heard in addition to the corporation of Dublin. In this case some of the local board bear the same names as the directors named in the bill. The petition here represents the inhabitants. (*Pontypool Gas and Water Bill*, *post*, p. 51.) Harrow has been supplied for a long time by a single individual, who has now sold his gasworks to a limited company, as we say, at an undue price. That company now comes to ask for a capital, not only sufficient to pay the purchase-money, but to carry on the business for a long time. We object to pay such a price as will enable dividends to be paid on £60,000, when £15,000 would be sufficient to erect gasworks.

Michael (for promoters) : Only 200 persons petition out of a population of 11,000 or 12,000.

Mr. RICKARDS : That is the population, not the gas consumers.

Michael : The public body elected by the inhabitants of the district are the proper parties to see that the capital asked for is the right amount. The ratepayers who have signed in favour of this bill are equal in number to those who have petitioned against it. No public meeting of inhabitants was called by the petitioners.

Richards : I am told there was.

Michael : I am told it was a private meeting.

Mr. RICKARDS : This is not a matter raised in the petition or objections, and therefore we cannot go into it.

Michael : The local board are the proper parties to represent both consumers and inhabitants. The company are bound to charge public consumers the lowest price charged to private consumers, and therefore the local board are the proper parties to keep down both the price and the capital. This is the first case before the Referees of a local board petitioning in favour of a bill in opposition to consumers who petition against it. In the *Alliance Gas* case, the con-

suffer by the competition. Anything that comes from the Staffordshire and Worcestershire canal may only go two miles on it, while it may go 20 miles on the Severn.

Rodwell (in reply) : Admitting that the railway may interfere with the traffic of the canal, that does not give the Severn navigation trust a right to be heard. In the *Hereford and Gloucester Canal* case the promoters sought to remove a link in the chain of the navigation, so destroying the current of traffic. The Staffordshire and Worcestershire canal petition in this case and their *locus standi* is not objected to. The only competition is between the feeder to the Severn and the railway : the results to the Severn commissioners are too remote. As to finance, the real parties affected by this bill are not the borrowers but the lenders, who are the canal company. Moreover, the Great Western company are bound to guarantee a certain revenue to the Severn commissioners ; so, in injuring them, we should only injure ourselves.

Locus standi Disallowed.

Agents for Petitioners, *Dorington & Co.*

Petition of (3) **GLYNCEWEG COLLIERY COMPANY, LIMITED.**

Railway—Dock and Railway Company—Purchase of Undertaking by Railway Company—Amalgamation—Colliery Owners Working Mineral Railway—Sidings—Tolls, alleged excessive—Traders and Freighters—Previous Legislation—Railway rates, already authorised, attempt to reduce.

The Great Western railway company proposed to buy up, and merge with their own undertaking, the dock, railway, and works of a floating Dock company. The bill was opposed by colliery owners, who worked a mineral line, and whose traffic, in passing along this line to the dock railway, was compelled to use a siding belonging to the Great Western company. The petitioners complained that they now had to pay a much higher rate for coals carried on this siding than was authorised by the Dock Company's Act, and charged for the use of the dock railway. They therefore asked to be allowed to urge upon the Committee an equalisation of rates by reducing those of the Great Western to the scale of the other amalgamating company. The petitioners also claimed to be heard as traders and freighters, as they carried coals from other collieries, besides their own, along their mineral line to the docks ; but their petition did not state that they were traders and freighters :

Held, that under these circumstances, no change in the existing authorised tolls and rates being proposed by the bill, the petitioners could not be heard to complain of previous legislation, and to claim a reduction of such rates.

The *locus standi* of the petitioners was objected to, because (1) their rights, interests, or property are in no way affected ; (2) they complain not of the transfer of the floating dock to the promoters, but of the rates they are obliged to pay for passing over a siding belonging to the promoters on their way from the mineral line which they work to the docks ; but that is not a ground of objection entitling them to be heard ; (3) they do not allege that they are traders and freighters over the promoters' railway, or that they represent any class of such traders and freighters, and, therefore, they cannot be heard with respect to tolls and charges ; (4) the bill contains no provision with respect to tolls or charges entitling them to be heard ; (5) the petitioners allege no ground of objection entitling them to be heard according to practice.

Thomas (for petitioners) : The promoters propose to acquire the whole undertaking of the Briton Ferry floating dock company, and to absorb the railways of the dock company. We own a colliery at the head of the South Wales mineral railway, and we work this mineral railway, provide the plant and rolling stock, and carry over it a considerable tonnage of coals—not only our own but other people's coals—for shipment at the docks. We therefore not only work the line, but we are traders and freighters.

Mr. RICKARDS : You do not say that you are.

Thomas : The sidings of the Great Western railway, contiguous to their Briton Ferry station, intervene between the dock company's railway, and our railway, and we are obliged, in order to pass to and from the docks, to pass over a certain portion of such sidings. The dock company were only authorised by their Act passed in 1851, to charge, as a maximum toll for the conveyance of coal upon their railway, 1½d. per ton without, and 2d. per ton with, locomotive power ; whereas, for the use of the siding which we are obliged to traverse for a quarter of a mile, in passing from our line to the dock railway, the Great Western company charge 4d. per ton. We say that such a toll is excessive, and a great hindrance to trade ; and before the Great Western are permitted to acquire the undertaking of the dock company, we ask to be heard in order to get this toll reduced to the maximum toll charged on the dock company's line. According to Parliamentary usage, in all cases of amalgamation, surrounding lines are entitled to be heard to ask for a revision of rates ; and in this case we not only use the Great Western siding, but the dock and railway which are the subjects of amalgamation. If it is objected that we are only one trader, the answer is that we really represent a class, as there is no one else

in the district, except the small collieries now springing up, whose traffic we work.

Rodwell, Q.C. (for promoters) : The petitioners are not traders and freighters. They are merely persons who work the South Wales mineral railway. The constructors of that railway knew that to get to the docks they would have to use a portion of the Great Western system, and would be subject to this 4d. toll. The petitioners are not in any way affected by this bill, and all they complain of is an excessive charge already authorised by Parliament, and not arising under the bill.

The CHAIRMAN : The colliery company work the mineral line under a lease ?

Thomas : Yes; they also own more than three-fourths of it as shareholders.

Locus standi Disallowed.

Agents for Petitioners, *Baxter, Rose, & Norton.*

HARROW GAS BILL.

Petition of CONSUMERS OF GAS, BEING MASTERS OF HARROW SCHOOL AND OTHER PERSONS RESIDING AT HARROW.

24th March, 1873—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company — Purchase of Undertaking — Alleged Excessive Capital — Masters of Harrow School — Consumers — Representation — Local Board — Outside Petitioners — Public Meeting — Practice — Question not raised in Petition or Objections — Not entertained by Court.

A bill, promoted to incorporate a gas company and raise capital for the purchase of gas works from a private individual for the supply of Harrow, was supported by the local board of the district, and opposed by 200 out of 260 consumers, being masters of Harrow school and others. Most of the petitioners resided within the district under the jurisdiction of the local board, but a few were persons residing outside that jurisdiction, and both classes of petitioners urged that the capital sought to be raised by the bill was in excess of what was requisite, and that the purchase would be disadvantageous to the district to be supplied :

Held, that, notwithstanding the support of the bill by the local board, the petitioners representing consumers were entitled to a hearing.

Where a statement of fact made by counsel in argument was denied on the other side, the Committee declined to go into it, there being no allegation on this point in the petition or objections.

The *locus standi* of the petitioners was objected to, because (1) they were not the municipal or other authority in Harrow, and the local board of health for the district of Harrow had petitioned in favour of the bill; (2) the petitioners did not represent the inhabitants or consumers of gas in Harrow, or the district proposed to be supplied; (3) there were no grounds for a hearing according to practice.

Richards, Q.C. (for petitioners) : The petition represents the intelligence and respectability of Harrow. It is signed by the masters of Harrow school and other residents in Harrow. We represent 200 out of 260 consumers. No doubt in the *Accrington* and *Aberdare* cases (1 *Cliff.* and *Steph.* 111-12 and 123-4) the Referees disallowed the *locus standi* of consumers as against the local board, but in the *Alliance Gas Consumers'* case (2 *Cliff.* and *Steph.* 176), consumers were heard in addition to the corporation of Dublin. In this case some of the local board bear the same names as the directors named in the bill. The petition here represents the inhabitants. (*Pontypool Gas and Water Bill*, post, p. 51.) Harrow has been supplied for a long time by a single individual, who has now sold his gasworks to a limited company, as we say, at an undue price. That company now comes to ask for a capital, not only sufficient to pay the purchase-money, but to carry on the business for a long time. We object to pay such a price as will enable dividends to be paid on £60,000, when £15,000 would be sufficient to erect gasworks.

Michael (for promoters) : Only 200 persons petition out of a population of 11,000 or 12,000.

Mr. RICKARDS : That is the population, not the gas consumers.

Michael : The public body elected by the inhabitants of the district are the proper parties to see that the capital asked for is the right amount. The ratepayers who have signed in favour of this bill are equal in number to those who have petitioned against it. No public meeting of inhabitants was called by the petitioners.

Richards : I am told there was.

Michael : I am told it was a private meeting.

Mr. RICKARDS : This is not a matter raised in the petition or objections, and therefore we cannot go into it.

Michael : The local board are the proper parties to represent both consumers and inhabitants. The company are bound to charge public consumers the lowest price charged to private consumers, and therefore the local board are the proper parties to keep down both the price and the capital. This is the first case before the Referees of a local board petitioning in favour of a bill in opposition to consumers who petition against it. In the *Alliance Gas* case, the con-

sumers outside the district were not represented by the corporation, and there consumers were petitioning in addition to the corporation. The *Pontypool* case is not really the same as this. There was no petition from the corporation in that case. Here the matter has been investigated, and favourably decided upon by the local board; and out of nine members present at the meeting of the board, only two voted against affixing the common seal to the petition in favour of the bill.

Mr. RICKARDS: We do not inquire into the way in which the members voted. We take the seal of the body as being evidence of their act. Do all the gentlemen signing this petition live within the jurisdiction of the local board?

Richards: No. Some of them do not. The local board represent only a small portion of the parish of Harrow. They only represent one-tenth of the population—and not the consumers.

The CHAIRMAN (to Michael): Are we to take it from you that 11,000 is the population represented by the local board?

Michael: No. It is the population of the district represented by the bill.

Locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Sherwood & Co.*

HOVE IMPROVEMENT BILL.

Petition of (1) the CORPORATION of BRIGHTON;
(2) OWNERS and RATEPAYERS in HOVE.

16th June, 1873.—(Before Mr. BRISTOWE, M.P.,
Chairman; Mr. WYNN, M.P.; and Mr.
RICKARDS.)

Improvement Bill—Fusion of Governing Bodies in Parish—Municipal Corporation—Parliamentary Borough—Extension of Municipality—Annexation of Parish by Municipal Borough—Ratepayers and Owners—Distinction between—New Burdens on Property—Minority of Owners objecting to—Single Ratepayer—Representation—Improvement Commissioners—Vestry—Common Seal—Water Supply—Apprehended Injury to Paving and Pipes—Easement—Public Health Act, 1848, ss. 68-71.

A bill to abolish two sets of commissioners in a parish, and substitute one new body to manage all local and sanitary matters, was promoted by individual ratepayers and owners within the parish, and opposed (1) by a neighbouring municipal corporation, whose borough, with the parish of the promoters, formed one Parliamentary borough, on the ground that through identity of interest in this and other ways, they ought to be united in one municipality. The petitioning

corporation also alleged that they had expended large sums of money for the benefit of the promoters as well as themselves. They further alleged that they were ratepayers and owners of water-mains and pipes within the parish.

The bill was also opposed by (2) a small minority of ratepayers and owners within the parish, though the bulk of the ratepayers and owners had expressed their approval in a public vestry meeting, convened for the purpose of discussing the bill:

Held, that the alleged expediency of annexing the district of the promoters to the Parliamentary borough, and the fact that the corporation had expended money in improvements, the benefit of which the promoters had shared, did not give the corporation a *locus standi*; and that they were not entitled to be heard as ratepayers, their position being only that of a single ratepayer:

Held, further, that the *locus standi* of the petitioning ratepayers must be disallowed on the ground of representation; but that the owners were entitled to be heard against the proposed imposition of new burdens.

The bill was promoted by a large majority, comprising four-fifths, of ratepayers and owners of property in the parish of Hove, its object being to abolish the commissioners of Brunswick Square and West Hove districts, and to unite the whole of Hove into one parish, under one governing body, with the title of commissioners, to manage all local and sanitary matters. The bill was opposed by the corporation of Brighton, principally on the ground that the parishes of Hove and Brighton, forming one Parliamentary borough, ought to form one municipality, whereas the tendency of the bill was to promote rivalry, and frustrate the future union of the two parishes. The petitioning ratepayers and owners raised a similar objection, and also complained of the new taxation which would arise under the bill.

The *locus standi* of the corporation of Brighton was objected to, because (1) the bill does not affect any portion of the district under the control or superintendence of the petitioners, (2) nor interfere with or derogate from their authority as the municipal or sanitary authority of Brighton; (3) the petitioners cannot be heard as a neighbouring corporation, to raise the question of the expediency of annexing the parish of Hove to the municipal borough of Brighton, as the present bill does not injuriously affect the town of Brighton, and such question was settled in a former session in the House of Lords, when

more than four-fifths of the ratepayers of Hove petitioned against such proposal; (4) although the petitioners are ratepayers, they are not entitled to a *locus standi*, as the bill has been unanimously approved by the vestry of Hove at a general meeting, and upwards of four-fifths of the ratepayers have petitioned in favour of the bill, and a single ratepayer cannot be heard against the general body of the ratepayers; (5) as to the allegation that the commissioners propose to alter the line and levels of streets by which the mains and pipes of the petitioners may be interfered with, no such power is sought by the bill, which, moreover, incorporates the Sanitary Acts, and therefore provides adequate protection and compensation to such mains and pipes; (7) the petitioners are not possessed of, or interested in, any property that may be taken under the bill; (8) the petition does not disclose such grievance or injury as to confer a *locus standi*.

The *locus standi* of the owners and ratepayers of Hove was objected to, because (1) the petitioners form such a small portion of the ratepayers and owners affected by the bill, as not to entitle them to be heard according to the practice of Parliament; (2) they do not allege any special injury to distinguish their case from the main body of ratepayers and owners; (3) such petitioners as are ratepayers in either the Brunswick Square or West Hove districts, are represented by their respective bodies of commissioners, who petition in favour of the bill; (4) the remainder of the petitioners, who are ratepayers and owners in Hove, cannot be heard in opposition to the unanimous approval of the bill by the vestry of Hove, and by four-fifths of the ratepayers and owners; (5) the small body of ratepayers and owners who petition against the bill cannot be regarded as representatives; the petitioners cannot be heard on the question of including Hove in the borough of Brighton, that question having already been decided adversely in Parliament, on the opposition of nearly all the ratepayers; (7) the petitioners are not owners or interested in lands affected by the bill, (8) and are not entitled to a hearing according to practice.

Littler, Q.C. (for petitioners): Both petitions may be taken together. The parish of Hove consists of three sections: (1) the Brunswick Square commissioners' district; (2) the West Hove commissioners' district; (3) a district having no local governing body. The bill proposes to abolish the commissioners, and to unite the whole of Hove into one parish, under one governing body, with the title of commissioners. The corporation of Brighton in their petition, *inter alia*, say, "The parish of Hove adjoins the borough of Brighton, and, for all practical purposes, forms part of the town of Brighton, and also part of the Parliamentary borough of Brighton." By the Brighton Intercepting and Outfall Sewers' Act, 1870, the powers of the Act are vested in a sewers' board, consisting of the corporation of Brighton, and the Brunswick Square and West Hove commissioners. The promoters propose to alter the constitution of that board, and under the bill it will be elected by a new body. By an Act passed last session, the undertaking of the Brighton, Hove, and Preston water

works company became vested in the corporation of Brighton, and under that Act the whole parish of Hove became included in the limits to be supplied by us; our mains, &c., are laid down in all parts of the Hove district, and we pay rates for all mains, &c., laid down in the West Hove improvement district, and the Brunswick Square commissioners' district, as well as those parts not comprised in either of these two districts. The bill will subject us to rates in respect of the district beyond the Brunswick Square and West Hove districts, from which rates we have hitherto been exempt. As such ratepayers, we object to the bill. We say that Hove ought to be included in the municipal, as it is already included within the Parliamentary borough of Brighton, whereas the bill will create a rival authority in the immediate proximity of the borough, and obstruct the union of the two places. The authorities of Brighton have spent large sums of money, *inter alia*, on groynes and sea-defences, but for which Hove could hardly have existed; and also on the pavilion, public library, &c.; and the inhabitants of Hove share these benefits equally with Brighton. With regard to the petition of ratepayers and owners, they also urge that the parishes of Brighton, Preston, and Hove ought to form one municipal borough, as well as one Parliamentary borough. All local and sanitary authority ought to be vested in one body. This result would be frustrated by the passing of the bill. The corporation of Brighton acquired in 1872 the waterworks for the supply of Brighton, Preston, and Hove, and this fact is another argument for amalgamation. The petition of owners against the *St. Helen's Improvement Bill* (1 Cliff. & Steph. 52) is in my favour. Here a greater number of petitioning ratepayers are owners. Fifteen of the petitioners are unrepresented by any existing body. Of the 58 others, those at any rate who are owners within the representative district are entitled to be heard; and those who are beyond the district ought not to be struck out, because they have no one to represent them. Even a single ratepayer in the unrepresented district may be heard. (*Weaver River Navigation Bill*, 1872, where the *locus standi* of the Shropshire Union Company was allowed, 2 Cliff. & Steph. 239; and *Newry Borough Improvement Bill*, 2 Cliff. & Steph. 183.) The corporation of Brighton are entitled to be heard with regard to both districts, being owners of mains and pipes in both areas.

Newall, Parliamentary Agent (for promoters): They have simply an easement to lay down pipes.

Littler: They have that property throughout the whole district. I do not pretend that they could be heard as ratepayers against the commissioners if the bill were promoted by the commissioners, but that is not the case. The promoters say that the bill is promoted by ratepayers, and are therefore out of Court on the question of the common seal.

The CHAIRMAN: The Court are of opinion that the fact of the corporation of Brighton having spent certain sums of money within the ambit of their borough, gives them of itself no right to a *locus standi* against the bill.

Clerk, Q.C. (for promoters): The petition of owners and ratepayers is a mere echo of the petition of the corporation of Brighton, the allegations of both being that Hove ought to be part of the municipality of Brighton. The bill is promoted by owners and occupiers of property in Hove. With regard to the petitioning ratepayers and owners, they cannot claim a *locus standi*, as the bill was unanimously approved at a public vestry meeting in Hove, and also by four-fifths of the ratepayers and owners of Hove. The corporation can only claim to be heard as owners and ratepayers in respect of pipes, &c., in Hove. Here you have a question of whether a single ratepayer can be heard in opposition to the body of ratepayers who are in favour of the bill, and whose interests are identical with his. The case of the *Belgravia and South Kensington Bill, Petition of St. Luke's, Chelsea* (1 Cliff. & Steph. 124) is in point. You will not hear a small section of ratepayers in opposition to the bulk of the ratepayers. A public body represents both the minority and the majority. (*Sheffield Corporation Bill*, 2 Cliff. & Steph. 53.) As to the apprehension of injury from the alteration of the lines and levels of streets, compensation is provided by our 41st clause, and by the Public Health Act, 1843, sections 68 and 71.

The CHAIRMAN: We are satisfied that the 41st clause of the bill, taken with the provisions of the general Act, sufficiently protects the interests of the corporation in that respect.

Mr. RICKARDS: Three classes appear to be comprised in the petition, viz., owners of property in the two districts, ratepayers in the two districts, and owners in Hove not within the two districts.

Clerk: Yes; but only the owners of property who have no voice in the election of the governing body are entitled to be heard. This is a bill promoted by a large majority of ratepayers and owners, and the case of the few who petition against it does not differ from that of the majority, nor do they sustain any special injury. Nearly the whole acreage of Hove, whether built upon or not, belongs to the promoters of the bill, as was proved in the other house. The amount owned by petitioners against the bill is infinitesimally small. Our Act does not interfere with the corporation of Brighton as owners of water-works.

Mr. RICKARDS: In the *St. Helen's* case the Referees put the right of owners, whose property was to become rateable for the first time, on something like the same footing as an owner whose land would be touched or taken. The bulk of landowners in this case (i.e., those promoting the bill) appear to think that any additional taxation to which they may be subjected will be more than compensated for by the improvements under the bill; but suppose one of the owners has a different opinion?

Clerk: I say he is not entitled to be heard unless he can show some special injury which makes his case different from the rest.

The CHAIRMAN: You lay down this proposition—that if a vast proportion of the owners in any district claim to place a burden upon themselves, a small number of owners ought not to be

allowed to appear in opposition to the preponderating number in the district?

Mr. RICKARDS: Apply that argument to the taking of land. Supposing the great majority of landowners are willing to give up their land, and a small proportion are unwilling to do so?

Clerk: There is a wide distinction between the case of an owner whose land is taken, and an owner who is merely rated. If instead of promoting a bill, we were merely applying the general Acts, a small minority could not be heard.

The CHAIRMAN: Under the Local Government Act, dissentients have a right to be heard, whereas you would exclude them altogether. It seems a bold proposition you are laying down—that a certain number of ratepayers and owners not clothed with a public authority have the right to say that they think such and such a thing is for the benefit of the whole area, over which they propose to lay the new burden, and that the dissentient owners shall not be allowed to appear and oppose.

Clerk: They are only entitled to be heard if they have a special grievance. (*The Maryport case*; *Smeth*. 128.)

The CHAIRMAN: The *locus standi* of the Corporation of Brighton is *Disallowed*. The *locus standi* of the Ratepayers is *Disallowed*; but the *locus standi* of Owners is *Allowed* against the imposition of new burdens, and that involves the preamble.

Agent for Bill, *Newall*.

Agents for the Corporation of Brighton and Owners and Ratepayers of Hove, *Sherwood & Co.*

KINGSTOWN TOWNSHIP BILL.

Petition of (1) the DALKEY TOWNSHIP COMMISSIONERS.

7th April, 1873.—(*Before Mr. ADAIR, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Practice—Township Commissioners—Alleged Informal Petition—Heading—Description of Petitioners—Common Seal—Signatures—S. O. 131—["When Petition against Bill to be presented."]

A petition presented against a bill was headed "The humble petition of the chairman and commissioners of the township and district of Dalkey under their common seal;" the seal affixed to the petition was inscribed "Dalkey Township Act, 1867;" and following the seal were the signatures of individual commissioners. The commissioners were really incorporated, under their Act of 1867, as "The Dalkey Township Commissioners," and it was now objected that

no such body existed as was described in the heading; that the seal had no reference to "the district" of Dalkey; that there was "no statement that it was the seal of anybody;" and that the petition was, on these grounds, informal:

Held, that the description of the petitioners was sufficient, and objection over-ruled.

This was an improvement bill, promoted by the commissioners of Kingstown. It was opposed by the governing body of Dalkey, an adjoining township, whose Act incorporated them under the title of "The Dalkey Township Commissioners." Their *locus standi* was objected to, *inter alia*, "because the petition is informal and void, inasmuch as it purports, both in the heading and signatures thereto, to be 'The humble petition of the chairman and commissioners of the township and district of Dalkey under their common seal,' whereas there is no such body known to the law, or having a common seal, and the seal (if any) attached to the petition is, accordingly, not their seal, and the petition, in conformity with the rules and practice of Parliament, cannot be received."

Clifford (for petitioners): There is no difficulty here, as there may have been in other cases, in identifying the petitioners. We say we were "incorporated in 1867, under an Act for the improvement of the township and district of Dalkey," and were by that Act charged with such and such duties. Over and over again our petition states that we are the governing body in Dalkey, and represent the inhabitants. We may not have described ourselves in the heading of the petition by the exact title assigned to us in our Act of Parliament, but that defect, if it be one, is cured by the seal at the foot of the petition, which is the seal of the only corporate body existing for the local government of Dalkey, and by the signatures of individual commissioners. In the allegations of the petition, we are amply identified as the governing body, and the fact is not disputed that there is no other such body.

[On the production of the original petition, it was found to bear a seal inscribed, "Dalkey Township Act, 1867."]

Pembroke Stephens (for promoters): (1) The production of the seal shows that a petition headed "The petition of the chairman and commissioners of the township and district of Dalkey," must be informal, because the seal has no reference to the "district" of Dalkey, and there can really be no such petition; (2) to the seal there is appended no statement that it is the seal of anybody. Thus the petition is not in conformity with S. O. 131, which requires that it should be "prepared and signed in strict conformity with the rules of the House." (*Glasgow Gas Bill*, 1843, *May's Parliamentary Practice*, 7th edition, 753; *North Eastern Railway Bill*, *Petition of Iron Manufacturers*, 2 Cliff. & Steph. 147.) The mere addition of the names of commissioners after the seal does not cure the

defect if they do not properly describe themselves in the heading, and if the sealing of the petition is informal.

The CHAIRMAN: You say that a description appears in the heading to this petition which is unknown to the Dalkey Township Act, 1867?

Stephens: Yes. These parties ought to know their proper title; they have not the excuse of being outsiders.

The CHAIRMAN (after deliberation): The objection is over-ruled.

Petition of (1) the DALKEY TOWNSHIP COMMISSIONERS; (2) the BLACKROCK TOWNSHIP COMMISSIONERS.

Improvement Bill — Extension of Township — Transfer of Gasworks to Improvement Commissioners — Supply of adjacent Townships — Saving Clause — Public Lighting — Gas Consumers — Nuisance, Apprehended — Drainage Area, Extension of — Drainage Committee, Constitution of — Costs Clause — Intercepting and Outfall Sewer — Interference with Outfall Sewers of other Local Authorities — Bridge-tax, Abolition of — Consequent Increase of Public Burdens in Adjoining Townships — Public Health Act, 1848 — Local Government Act, 1868.

The township commissioners of Kingstown promoted an improvement bill which, *inter alia*, proposed to extend boundaries, abolish a bridge-tax, buy up gasworks, construct an intercepting and outfall sewer for Kingstown and an adjoining township, and introduce a complete code of local government in sanitary and other matters. The bill was opposed by the commissioners of Blackrock, an adjoining township, on the ground (1) that their powers of securing a proper outfall for the sewerage of Blackrock would be interfered with and limited by the bill; (2) that the abolition, as regards Kingstown, of the bridge-tax, now paid by Kingstown, in common with Blackrock and other townships, would increase the share of this tax falling to be paid by Blackrock; (3) that whereas the existing gas company were bound to supply Blackrock with gas, under agreement, it was doubtful whether such obligation would attach to the promoters in case of the transfer of the works, and that the petitioners were entitled to appear against this proposal, as the public lighting authority, and also as representing the interests of gas consumers in Blackrock:

Held, that the petitioners had a *locus standi*, limited to these three parts of the bill and the preamble relating thereto.

The commissioners of Dalkey, a neighbouring township, also petitioned, objecting to the proposal to include Dalkey compulsorily in the outfall sewer scheme of Kingstown; the nuisance which would be occasioned by discharging the sewerage of Kingstown into the sea close to Dalkey; and the constitution of the proposed drainage committee on which they would be represented. They also objected to the extension of the township of Kingstown, the gas transfer clauses, and other parts of the bill:

Held, that the petitioners had a limited *locus standi* against the extension of the township, which would increase the nuisance they apprehended, and also against the outfall sewer, the costs clause, and the corresponding portions of the preamble.

The *locus standi* of the Blackrock township commissioners was objected to, because (1) the petitioners show no interest in the objects of the bill entitling them to be heard; (2) they are commissioners of a distinct township and are not the municipal or other authority for managing any part of the district affected by the bill; (3) they cannot be heard on the subject of the bridge-tax, as it is not levied or controlled by them, and they are represented in this matter by the corporation of Dublin and the port and docks board, who also petition against the bill; (4) they cannot be heard as to the intercepting sewer as it does not traverse the Blackrock township, and the bill does not impose any financial or other burdens upon them in respect of it; (5) they cannot be heard with respect to the purchase by the promoters of the undertaking of the Alliance and Dublin gas consumers company, inasmuch as the petitioners admit that their rights were fully protected by a clause in "The Alliance and Dublin Gas Act, 1871," and the bill transfers to, and makes binding upon, the promoters all the engagements and liabilities of the company, and further the petitioners are not the guardians of the gas consumers in their own or any other district; (6) no rights, property, or privileges of the petitioners are interfered with, nor is their township injuriously affected; (7) they are not entitled to a hearing according to practice.

The *locus standi* of the chairman and commissioners of the township and district of Dalkey was objected to, because (1) the petition is informal [*vide supra*]; (2) the petitioners have no jurisdiction or interest in the townships affected by the bill; (3) and (4) their allegations are inconsistent and contradictory; (5) they have no right to oppose the preamble of a bill which is promoted for the benefit of the public, and in accordance with the principles of modern legislation; (6) they claim to be exempted from schemes of drainage on the ground of "natural advantages," but they

have never availed themselves of these advantages, nor have they any general system of drainage whatever; (7) they will be represented in all details of expense, &c., in the construction of the outfall sewer by the drainage committee; and (8) the injuries they apprehend from its construction are too remote; (9) no compulsory powers are sought over their lands or property; (10) no part of the Dalkey township is included in the district as proposed to be extended by the bill; (11) the petitioners are not the representatives of gas consumers in Dalkey, and if they were, all existing rights in connection with the gas company are protected by the bill; (12) they do not pray for any protective clauses in the bill; (13) they cannot be heard on any of the provisions of the bill affecting the internal management of Kingstown.

Clifford (for the Blackrock township commissioners): We are the sewer authority for Blackrock, and under the Public Health Act, 1848, and the Local Government Act, 1861, section 4, we not only have power to make sewers in our district, but to carry sewers for the purposes of outfall beyond our district. By clauses 49-51 of the bill this power will be seriously limited. Under clause 49 the promoters may require any sewer crossing the intercepting sewer to be led into the intercepting sewer. Clause 50 forbids any local authority or other public body to construct any sewer over, across, or under the line of the intercepting sewer, or to discharge, by any means whatever, any sewerage or offensive matter into any bay, estuary, or sea adjoining Kingstown or Dalkey, or any stream or river discharging itself into such estuary, bay, or sea. This clause may prevent us from discharging our sewage even within our own township. A scheme of outfall sewerage is in contemplation in Blackrock by utilising a certain stream which runs through it, but clause 50 will prevent us, as the local authority, from doing so. Clause 51 will give the Kingstown commissioners power to divert or choke up this stream. The object of the bill is to force us into a connection with Kingstown for the purposes of sewerage. It is against the interests of Blackrock that we should be so connected. If the bill passes, our powers as a nuisance and sewer authority will be curtailed to the injury of our constituents. We should also be made parties to a more extensive scheme of sewerage than we can afford, and be subject to additional taxation. Moreover, if driven to join Kingstown we should be without adequate representation. Next, we object to the proposal to exempt Kingstown from taxation in respect of certain bridges in Dublin. Such exemption would impose heavier burdens on Blackrock and other townships, which have hitherto shared the bridge-tax with Kingstown. Then the promoters propose to buy compulsorily the undertaking of the Alliance gas company, which supplies Dublin, Kingstown, Blackrock, Dalkey, and other townships. This company are bound under agreement to supply our public lamps at 4s. 6d. per 1,000 feet, but there would be no obligation laid upon the promoters to supply us. It is true there is a clause which purports to keep on foot the obligations of the gas company, but we say that such clause

will not meet our case, and at all events it gives us a technical right to be heard for the protection of our rights, we representing the gas consumers within our limits. (*South London Gas Bill*, 2 Cliff. and Steph. 218.)

Clifford (for Dalkey township commissioners): Part V. of the bill proposes to constitute a drainage committee, composed of representatives appointed by the Kingstown and Dalkey commissioners respectively; and we are to be compelled to contribute towards the cost of constructing and maintaining the proposed outfall sewer. If it were not for the objections actually taken in this case, it would be difficult to understand how the promoters could question our right to be heard against such a proposal, made to force us into association with Kingstown for drainage purposes, when, as we say, we can act more advantageously alone. The length of this sewer will be 2½ miles, but it will only run for 400 yards within our township, and it will be so constructed as to discharge the entire sewage of a district containing 70,000 persons upon the sea-shore of Dalkey, immediately under valuable house property now inhabited. As the local authority, we object to the nuisance which would be thus created. We object also to the proportion of representation assigned to us in the proposed drainage committee, and we say that Dalkey would be subjected to unnecessary outlay if the scheme were sanctioned by Parliament. The objection that we shall be represented in the proposed drainage committee cannot possibly be an answer to our allegation that no such body is necessary, as far as Dalkey is concerned; nor for purposes of *locus standi* is it in the least material whether a scheme which affects us so vitally is or is not "in accordance with the principles of modern legislation." As to the proposed extension of Kingstown township, while it is true that no part of Dalkey will be included within the new boundary, the drainage area will thereby be extended, and the nuisance we apprehend will be increased. With regard to the gas and bridge clauses, our case is substantially that of Blackrock; and though we do not pretend to be affected directly by all the 300 clauses of the bill, we ask for a general *locus standi* against it, limited of course, as we shall be, by the terms of our petition.

Pembroke Stephens (for promoters): The bill is one for various objects, many of which have not been discussed, and cannot be objected to by the petitioners. As regards the bridge-tax, the clause which relieves Kingstown is objected to by the ballast board of Dublin, who collect the tax, and they, not the petitioners, are the proper persons to be heard against the bill on this point. So, as to the proposed extension of the township, the county grand jury, whose *locus standi* we do not question, are the proper persons to appear. As to the sewage question, we will concede to Blackrock a *locus standi* against any clause interfering with any existing outfall of that township; but it is a mistake to suppose that the general Act empowers Blackrock to come into our district for outfall drainage purposes; they can only do so by agreement. It is impossible to suppose that Parliament would grant compulsory powers to one township over an adjoining township for such purposes.

Clifford: I am told that we now drain through a portion of Kingstown township by means of an existing stream.

Stephens: If you are doing so, you are breaking the law, for you have no power to foul a running stream, and I believe, at this moment, an injunction is pending to restrain you. Against clause 50, Blackrock may take a *locus standi*, because a local authority whose sewage drifted upon our foreshore might possibly, under clause 50, be subjected to an injunction. But we cannot concede the *locus standi* of Blackrock against clause 49, because our intercepting sewer will not enter the township of Blackrock, and therefore unless they come beyond their own boundary no sewer of theirs can touch this intercepting sewer. As to our purchase of the Alliance gas works, the Blackrock commissioners are not the lighting authority, and all the power they possess is the power to make an agreement for three years, a power which gives no right to a *locus*. (*Dorking Gas Bill*, 2 Cliff. & Steph. 196.) The petitioners say that their rights were "fully preserved" by a clause in the Alliance Gas Act, 1871. If so, how are they damaged by the bill, which contains a clause (219), taking over the company's undertaking with all its obligations? We do not alter the Act of 1871 in any way: the status of Blackrock will be exactly what it was, and the petitioners fail to show the slightest injury.

Mr. RICHARDS: The Alliance company will cease to exist.

Stephens: Yes; and they will be before the Committee.

Clifford: Not representing us.

Stephens: They will represent the Act of 1871. As to Dalkey I concede their *locus standi* against part V. of the bill [construction, &c., of intercepting sewer], but the petition is altogether silent as to the bridge-tax, and the petitioners cannot therefore be heard upon that point. As to the gas purchase they do not say, as Blackrock says, that they wish to be heard in order to secure the advantages they now enjoy under the saving clause in the Act of 1871, and their objection to get their gas through the same pipes and from the same works, in the hands of different people, is a purely fanciful one. They do not say that quality or price will be altered, and it is hard to see what possible injury they can sustain. As the costs clause provides for the payment of a certain proportion of the costs of the bill by the drainage committee, upon which Dalkey will be represented, the petitioners will be entitled to be heard upon that clause. Their other allegations are only general, and they are only entitled to a limited *locus standi*.

The CHAIRMAN (after deliberation): The *locus standi* of the Blackrock township commissioners is *Allowed* against clauses 28 [abolition of bridge-tax in Kingstown], 49 ["sewers crossing the intercepting sewer to be led into the intercepting sewer"], 50 ["no sewer to be constructed across the intercepting sewer to discharge into the sea"], 51 ["drainage committee to destroy sewers, &c., constructed contrary to the Act"]; 208 to 230 [as to gas supply], and so much of the preamble as relates thereto. The *locus standi* of the Dalkey Township Com-

missioners is *Allowed* against clauses 7 and 8 [extension of township]; 29 to 84 inclusive [as to intercepting and outfall sewer]; and 305 [costs clause], and so much of the preamble as relates thereto.

Agents for Blackrock Township Commissioners, *Smith & Wall*.

Agent for Dalkey Township Commissioners, *Cruse*.

Petition of (3) the CORPORATION of DUBLIN.

Extension of Township—Water Supply by Neighbouring Corporation—Area of Supply—Objection to supply enlarged Area, compulsorily—Representation—Gas Company—Proposed Purchase of Gas Undertaking by Two Local Governing Bodies—Competing Bills—Agreement with Gas Company—Bridge-tax.

The bill was also opposed by the corporation of Dublin, who objected to the exemption of Kingstown township from the bridge-tax on the ground urged by Blackrock, and who further complained that whereas they were now under statutory obligation to supply Kingstown with water, they would become bound under the bill to supply at existing rates the extended township, a business which would be unremunerative. They also alleged that, before the promoters had given notice of their proposal to buy the Alliance gasworks at Kingstown, they, the petitioners, had entered into a provisional agreement (since confirmed) with the Alliance company to purchase their whole undertaking:

Held, that the petitioners had a limited *locus standi* upon each of these three heads of opposition.

The *locus standi* of the petitioners was objected to, because (1) they have no rights or jurisdiction in Kingstown, or interest in the bill; (2) the bridge-tax is not levied or fixed by them, and they are represented by the port and docks board, who levy the tax, and who also petition; (3) even if the petitioners could be heard, the tax in question is not proposed to be abolished, increased, or diminished in the city of Dublin; (4) the petitioners complain of the proposed gas purchase on the ground that they had entered into an agreement to purchase the undertaking of the Alliance and Dublin consumers gas company, but no ratification of what purports to be the agreement appears on the petition, nor is the seal of the corporation or the company attached thereto; (5) outside such agreement they have no interest in the supply of gas to any of the

townships affected by the bill, nor are they the guardians of the interests of gas consumers in Dublin; (6 and 7) various clauses referred to in the petition are merely permissive, and can only be exercised by agreement; other such clauses are descriptive, and do not entitle the petitioners to a hearing; (8) no lands, property, or rights of the petitioners are interfered with by the bill, nor does the petition allege that the city of Dublin will be injuriously affected; (9) the petitioners cannot be heard on any of the provisions of the bill for the internal management of Kingstown.

Granville Somerset, Q.C. (for the corporation of Dublin): The promoters object to our being heard on the score of distance, but that does not really affect the question of injury. Like Blackrock, we are entitled to be heard on the subject of the bridge-tax, as the exemption of Kingstown would impose an increased charge upon the ratepayers whom we represent. With regard to gas, prior to the introduction of this bill, we were in treaty with the Alliance company for the purchase of their entire undertaking; the terms were agreed upon, and a bill was introduced called "The Dublin Corporation Gas Bill," which is still pending. The Alliance is the only gas company in Dublin, and it supplies, amongst other places, Kingstown. The granting to the Kingstown commissioners of the gas powers sought for in the bill would be an unwarrantable interference with our rights in respect of the purchase of the gas undertaking. Our agreement with the Alliance company was a matter of public notoriety, but we never received any notice from the promoters of their intentions. Our bill was deposited on the 17th of December, but some days previous to that (12th December) an agreement was come to and sealed by which the company bound themselves to accept our terms. We, therefore, have a right to be heard against a proposal to take a portion of the district which, if our bill succeeds, we shall light.

MR. RICKARDS: If the two bills are before Parliament competing for the whole or part of the same district, they will both go before the same Committee. It is a question between two competitors for lighting the district.

Granville Somerset: As to water we actually supply Kingstown at this moment, and we object to clause 23, which varies existing arrangements under the Kingstown Act of 1869, and provides for the making and carrying out of agreements between the commissioners and ourselves respecting the supply of water. We also object to clause 8, the effect of which would be that we should be compelled to supply with water the extended district proposed by the bill. Such districts contain a scattered rural population which we could not supply profitably at existing rates.

Stephens (for promoters): The objections of the corporation of Dublin resolve themselves into three points, (1) water, (2) gas, (3) bridge-tax. With regard to (1) water they object to clauses 7 and 8, extending the present limits of the township. Surely the mere extension of limits cannot injure them; but if the corporation are of a contrary opinion we will concede

them a *locus standi* against these two clauses. As to (2) gas, the Alliance company have always had the supply in their own hands, and as they have petitioned, their *locus standi* has been conceded. The corporation of Dublin neither make nor supply gas, and the only possible interest they can get in the gas supply of Kingstown is through a third party. At the time the bill was deposited, there was nothing but a provisional agreement between the corporation and the Alliance company, and therefore they are at the utmost entitled to a limited *locus standi* upon that matter. (3) The bridge tax (section 28) is a tax for the repair of bridges in Dublin exclusively, and we accordingly seek to be exempted from it. It has always been collected and spent by the port and docks board who have petitioned, and their *locus standi* has been conceded. The corporation are represented on that board.

Granville Somerset: By four out of 25 members.

Mr. RICKARDS: Persons may petition against proposed enactments in different interests. Mr. Granville Somerset represents another class altogether from the administrators of the tax.

The CHAIRMAN: The corporation of Dublin are among the parties who supply the money which the other petitioners dispense.

Stephens: Yes; but the corporation are represented on the ballast board just as much as the vestries who petitioned last year against the Metropolitan board of works, and were refused a *locus standi*, are represented on that Board. (2 *Cliff. & Steph.* 264.)

Mr. RICKARDS: The corporation claim to be heard here as a representative body in behalf of the ratepayers, whereas the vestries were members of a constituent body.

Stephens: So are the corporation of Dublin. At any rate, the *locus standi* of the petitioners, if granted at all, should be limited to matters with which they have any concern.

Locus standi Allowed against clauses 7 and 8 [extension of township]; 28 [bridge-tax]; 208 to 230 inclusive [gas supply]; and so much of the preamble as relates thereto.

Agent for Petitioners, *Muggeridge*.

Petition of (4) ROBERT MEEKINS.

Landowner—Sewer—Interference with Property—Property "Injuriouly Affected"—Allegations of Injury, Sufficiency of—Land "Intersected" by Sewer—Compulsory taking, no Allegation as to—Rating—Representation—Notice—Landowners' Locus Standi.

The bill was opposed by a landowner, who had received notice as such, and alleged that his property would be intersected by the outfall sewer. It was objected that he had nowhere alleged that his property would be compulsorily taken, and further that in his allegations as to the effect of the bill

in increasing rates, he was represented by the promoters, who were the local governing body:

Held, that the petitioner, as a landowner, was entitled to an unlimited *locus standi*.

The *locus standi* of Robert Meekins was objected to, because (1) he has no right to be heard as an owner, lessee, or occupier, being represented by the Kingstown commissioners, who are elected by owners, occupiers, and ratepayers, and promote the bill under their common seal; (2) as to his property, which lies beyond the limits of the Kingstown township, he is represented by the Dalkey commissioners, who also petition; (3) the allegations that his residential property at Glasthule will be injuriously affected by the bill do not entitle him to a *locus standi* according to practice, and the petition nowhere states that his property will be compulsorily taken; (4) his other allegations with regard to works, rates, and borrowing powers, are of too vague and unspecific a character; (5) he is not justified in opposing a measure urgently needed and in accordance with the tenor of recent legislation; (6) he cannot be heard on any of the provisions for extending the boundaries, or for the internal management, of Kingstown.

Pead, Parliamentary Agent (for Robert Meekins): The petitioner is the owner, lessee, and occupier of property within the limits of the bill, and the proposed intercepting sewer would intersect in the most injurious manner his residential property, and inflict upon him and his undertenants serious injury. The outfall of the sewer would also be adjacent to other property of his, which would thus be injuriously affected. He further objects that the sewerage works will not be equal to the requirements of the district, and that the proposed levying of rates and borrowing of money will unnecessarily increase the already heavy taxation to which he and the other ratepayers are subject. The petitioner has had a notice served upon him as lessee of property required for the specific work, and yet the promoters attempt to exclude him because he happens to be a resident in a district represented by some local authority.

Mr. RICKARDS (to *Stephens*): The petitioner says that his property is going to be intersected, and that it will inflict upon him irremediable injury. Is not that enough?

Stephens (for promoters): I object, first, as regards rating, that he is distinctly represented by the body he helps to elect; and, secondly, that he has not as described his interest affected by the bill as to bring him within the ordinary rules applicable to landowners. It is incumbent upon a petitioner who resists a scheme for the purposes of which lands of his are required, to say that his land will be taken and that he objects. The petitioner here says he apprehends a depreciation in value of his property, but that is not enough. (*Birmingham Sewerage Bill, Petition of B. P. Noel, 2 Cliff. & Steph.* 232.) In that case sewage tanks were to be constructed on three sides of Mr. Noel's pro-

perty, but although he had received notice his *locus standi* was not allowed.

Mr. RICKARDS: The tanks were not to be on his property, although there might be a nuisance in its vicinity.

Stephens: The case shows that depreciation in value by itself will not suffice. If the claim to be heard is because the land is taken, it is not unreasonable to require that the petitioner should say so. There is no allegation of this kind, or that the petitioner has received notice. The fact is that, if we went to our extreme limits, a flight of steps leading from the end of his garden to the seashore might be removed.

Mr. RICKARDS: You remember the "*Post case*?"

Stephens: There, the allegation that the post would be taken was distinct.

Mr. RICKARDS: Supposing a petition says "the railway passes through certain valuable property of which your petitioner is owner." Is there any necessity for the landowner to say more?

Stephens: The landowner generally says that compulsory powers are sought over his property, and he objects thereto.

Mr. RICKARDS: The notice is a very strong admission on the part of the promoters, though we do not hold it to be conclusive.

Stephens: We have been obliged to serve notices right and left along the seashore for two miles and a half in the line of this sewer—in many cases perhaps unnecessarily. This gentleman has received notice as a reputed lessee. Can a petitioner, who has not stated that his land is required, or going to be taken, or that compulsory powers over it are sought, be entitled to a general *locus*?

Pead: The petition sets out the section authorising the particular work, and then states that the sewer passes through and intersects injuriously the residential property of the petitioner.

The CHAIRMAN: The Court allow the *locus standi* of the Petitioner.

Stephens: An unlimited *locus standi*?

The CHAIRMAN: Yes; a landowner's *locus standi*.

Agent for petitioner, Pead.

Petition of (5) JOHN JOSEPH CROSTHWAITE, and OTHERS, Commissioners and Ratepayers, &c., in Kingstown.

Improvement Bill—Common Seal—Representation—Dissentient Commissioners, Ratepayers, and Owners—Towns' Improvement (Clauses) Act, 1847—Towns' Improvement (Ireland) Act, 1854—Local Government (Ireland) Act, 1871—Special Order—Injury to Owners—Absence of Specific Allegations—Alleged Illegal Promotion of Bill—Remedy elsewhere—Injunction against Promoters—How Viewed by Parliamentary Tribunal—Double Signatures.

The bill was opposed by 18 petitioners, being dissentient commissioners, owners, and ratepayers in Kingstown, who alleged that it was promoted in evasion of certain provisions for the protection of ratepayers in the Towns' Improvement (Clauses) Act, 1847, of which provisions the promoters had been warned, but with which, nevertheless, they had neglected to comply. The petitioners further alleged that the ratepayers generally would be prejudiced by the bill, and that various provisions in it would be injurious to the petitioners as owners:

Held, that the minority of dissentient commissioners could not be heard against the common seal; that as ratepayers the petitioners were represented by the commissioners of Kingstown, who promoted the bill; that as owners, though many clauses in the bill would affect owners, the petitioners alleged no sufficiently specific injury upon which a *locus standi* could be founded; and as to the alleged illegal promotion of the bill, the Court refused to interfere, leaving the petitioners to their legal remedy elsewhere, and disallowing their *locus standi*.

(Per Cur.) A Committee will not go into allegations in a petition that a bill has been illegally promoted. They will say, "If the preliminary steps were illegal, you ought to have applied for an injunction to stop the parties. The bill has reached us, and we are not the proper persons to decide the question whether the bill has been properly brought forward or not."

The *locus standi* of J. J. Crosthwaite and others was objected to, because (1) they claim to be heard as commissioners, ratepayers, inhabitants, and owners, but are only 18 persons out of a population of 20,000; (2) they are not authorised, nor do they claim to sign the petition on behalf of any other commissioners, ratepayers, &c.; (3) they are, without exception, represented by the commissioners of Kingstown who promote the bill; (4) they nowhere allege that any lands, rights, &c., of theirs are compulsorily taken, or that any loss or grievance will result to them from the bill; (5) they complain that the objects of the bill have not been sought or accomplished by a Provisional Order, but admit elsewhere that they could not have been so accomplished; (6) some of the 18 persons who sign the petition have also petitioned separately: they cannot be heard on any of the provisions of the bill for the internal management of Kingstown.

Clifford (for petitioners): We say that the bill was deposited before its adoption by the commissioners at large, and was not laid before them until

it had already been unfavourably reviewed at a public meeting. The Local Government Act, 1871, and the Towns' Improvement (Ireland) Act, 1854 were adopted at a public meeting of ratepayers, in Kingstown, and the commissioners might have proceeded under their provisions, avoiding the expense of a private bill. This fact was formally communicated by us to the commissioners with a view to save expense. No answer, however, was returned by the commissioners, and the course they are taking is an evasion of the Towns' Improvement (Clauses) Act, 1847 (10 & 11 Vict. 34, ss. 132 & 134), which prescribes that the commissioners, before applying the rates in promotion of a bill, shall proceed by special order, and give certain notices in the interest and for the protection of the body of ratepayers.

Mr. RICKARDS: The petition in favour of this bill bears the seal of the Kingstown commissioners.

The CHAIRMAN: Is it the case that some of the objects of the bill could be secured under the provisions of the general Act?

Stephens: Subject to this—that until January of this year, too late for action this session—there was an express Parliamentary declaration that the Act of 1871 (section 32) should not be in force in Kingstown, i.e., until it had been formally adopted by the ratepayers.

Mr. RICKARDS (to Clifford): Do you object that the commissioners have proceeded illegally with this bill?

Clifford: Yes; and as it is probable that the bill may thus pass in violation of the general law, we should be before the Committee to point out that the law has been broken.

Mr. RICKARDS: The Committee would not go into that question. They would say, "If the preliminary steps were illegal, you ought to have applied for an injunction to stop the parties."

The CHAIRMAN: They would say, "The bill has reached us; we have nothing to do with the question whether the bill has been properly brought forward or not."

Clifford: If in the opinion of the Court our remedy lies elsewhere, I will not press the point further.* But besides this objection, some of the petitioners sign as ratepayers and owners.

Mr. RICKARDS: The petition is signed by 18 out of 20,000 ratepayers.

Clifford: But as the bill was condemned at a public meeting, it may be assumed that these petitioners represent a great many outside the petition.

Mr. RICKARDS: It is not signed by a chairman on behalf of a public meeting, but by 18 gentlemen, some of whom are commissioners in a minority on the board, and can hardly claim to be heard against the decision of their own body.

Clifford: Dealing with the petitioners as owners, they are entitled to a distinct hearing as such, against the clauses relating to streets, buildings, &c. (*St. Helen's Borough Improvement Bill*, 1 Cliff. & Steph. 45, text; *Cardiff Improvement Bill*, *Petition of Marquis of Bute*, 2 Cliff. & Steph. 155.)

Mr. RICKARDS: In the cases to which you refer the grounds of objection were that the property of the petitioners would be lessened in value. No doubt there are many sections here which will affect owners of property, but the question is whether the petitioners you represent have sufficiently stated how their individual interests will be affected.

Clifford: We ask to be heard generally "for the protection of our rights and interests."

Stephens (for promoters): As commissioners and ratepayers the petitioners are represented by the body of commissioners, and they do not allege that as owners they will be injured. They say that what is proposed to be done will be a loss to the township financially. As to the Local Government (Ireland) Act, 1871, being sufficient to secure our object, that is a reproduction of the English Act of 1858; but who ever heard of persons being restrained by injunction from applying to Parliament for a private Act, instead of availing themselves of the general law? The Local Government Act is merely permissive, and this view of a public Act was upheld in the *Dublin Tramways* case (2 Cliff. and Steph. 142) with reference to the general Acts affecting tramways in Ireland. Of these 18 petitioners, moreover, some have signed the other petitions in which they are more directly interested.

Locus standi Disallowed.

Agent for Petitioners, Cruise.

* An injunction was subsequently granted by the Vice-Chancellor of Ireland, restraining the Kingstown Commissioners from promoting the bill under their common seal, and from applying any portion of the rates towards such promotion. On appeal this injunction was confirmed by the Lord Chancellor and Lord Justice of Ireland, and extended so as to prevent "the special defendants" (the individual commissioners who signed the petition for the bill) from proceeding with the application to Parliament in any corporate capacity, while leaving them free to promote the bill at their own individual risk and cost. (*7 Irish Reports*, Eq. 383.) Before the Committee on the bill (Sir J. Ramsden, Chairman), the fact being elicited on the cross-examination of one of the promoters' witnesses that, owing to the injunction, the commissioners in their cor-

porate capacity were no longer the promoters, the Committee stated that, while they had no desire to stop the individual commissioners who still promoted the bill from calling further evidence, they felt that the withdrawal of the commissioners as a corporation would be conclusive against the preamble; and they therefore thought it right, in the interests of all parties, at once to announce this opinion. (*Minutes of Evidence*, House of Commons, May 7, 1873.) The option of going on with their case was not under these circumstances exercised by the commissioners in their private capacity, though after the Committee had reported to the House of Commons against the preamble, attempts were made, without success, to procure the recommitment of the bill. (See also *Sir Erskine May's Parliamentary Practice*, 7th Ed. 776.)

Petition of (8) JOHN REILLY.

*Township Commissioner—Disqualifying Clause—
Bankruptcy—Objection to new Definition—
Change of Status.*

The bill contained a clause, disqualifying any bankrupt from sitting as a town commissioner until he had paid his creditors in full. The existing Act contained a disabling provision apparently to the same effect, but it was contended that the words of the present bill were capable of a different construction. An unsuccessful attempt had been made under the existing Act to disqualify and displace one of the commissioners, who now claimed to be heard against the clause which introduced the new disqualification :

Held, that he was entitled to a *locus standi* against the particular clause.

The *locus standi* of John Reilly was objected to, because (1) he can only be heard (if at all) against clause 23; (2) he describes himself as a ratepayer of, and commissioner for Kingstown, but in both of these capacities he is represented by the Kingstown commissioners, who (3) promote the bill under their common seal; (4) the fact that legal proceedings were formerly instituted upon which the Court pronounced no rule cannot give the petitioner any additional right to be heard.

Clifford (for petitioner): Mr. Reilly is a ratepayer and resident in Kingstown, and is now and has been for 10 years past, with the exception of 1872, a commissioner for the township. The Kingstown Act of 1869, promoted by the same gentlemen as are now promoting this bill, greatly increased the causes of disqualification for a commissioner, but when the question of Mr. Reilly's alleged disqualification was tried upon a *quo warranto*, the Court decided in favour of the petitioner. The present bill disqualifies as a commissioner anybody who has been bankrupt, until his creditors shall have been paid in full. The petitioner believes this clause is directed against him, and claims a hearing to have the clause modified or expunged.

Mr. RICKARDS: The two sections (in the Act of 1869 and in the bill) appear on the face of them to enact virtually the same thing.

Clifford: The petitioner contends that his status will be altered by the new clause, which is an attempt to get rid of a legal decision in his favour and expel him from the body. The *Clyde and Cumbræ* was an analogous case (2 Cliff. & Steph. 157); so also is the *Glasgow, &c., Roads Bill, Petition of Clyde Navigation Trustees*. (2 Cliff. & Steph. 215.)

Stephens (for promoters): All we have done in our bill is to adopt the wording of the

latest Act on bankruptcy, viz., that of 1872. It does not affect the petitioner by name or differently from all other bankrupts. The commissioners have taken no action against Mr. Reilly; the legal proceedings were taken by the unsuccessful candidate.

The CHAIRMAN: *De facto*, the petitioner is a commissioner, and that after an appeal to a court of law; and he wishes to show that your clause, by adopting a new definition of bankruptcy, puts him in a worse position than the present law does.

Locus standi Allowed against Clause 23.

Agent for Bill, *Sharkey*.

Agent for Petitioner, *Cruse*.

LIMERICK AND KERRY RAILWAY BILL.

Petition of the GREAT SOUTHERN AND WESTERN RAILWAY.

5th May, 1878.—(*Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.*)

*Railway—Junction with existing Line—Plans—
Book of Reference—Omission to Schedule Land
—Alleged non-compliance with Standing Orders
—Objection not Lodged—Alternative Description—
Compulsory Powers not sought—Junction by Consent—S. O. 134—[“In what cases
railway companies to be heard.”]*

A bill which, *inter alia*, authorised a junction with an existing line of the petitioners was opposed on the ground that land and property of the petitioners would thus be taken or interfered with; but the land so affected was not described in the book of reference, in accordance with Standing Orders. The deposited plans however showed a junction as stated. On behalf of the promoters it was urged that the bill gave no compulsory powers of taking the land, so that the junction could only be made with the consent of the petitioning railway company: *Held*, however, that the petitioners were entitled to a general *locus standi*.

The *locus standi* of the Great Southern and Western railway company was objected to, because (1) their rights and property are only affected by the proposal to form by railway No. 1, a junction with the petitioners' railway in the parish of Tralee; (2) the fact that the petitioners are cesspayers in the counties of Limerick and Kerry, and so may be affected by the baronial guarantees proposed by the bill does

not entitle them to a *locus standi*, as they are only single ratepayers, and are represented by the grand juries; (3) the petitioners possess no interest (excepting that set out in objection 1) entitling them to be heard.

Clerk, Q.C. (for petitioners): The bill proposes to construct a railway from the Rathkeale and Newcastle Railway at Churchtown, to join our railway at Tralee, and for that purpose our sidings, works, and conveniences there are liable to be interfered with and our land taken. The promoters describe railway No. 1 as one that is to terminate "by a junction with the Great Southern and Western Railway in the townland of Cloonalour, on the east side of the mail road, from Tralee to Listowel." There can be no doubt that they intend to join our line. This is shown by the deposited plans and sections, although by some omission the promoters have not included our station in their book of reference, to which omission we neglected to raise any S. O. objection. In the *Dundalk and Greenore* case (1 Cliff. and Steph. 3), where the land was scheduled but the plans showed no junction, the *locus standi* was allowed. That was the converse of this case.

Mr. RICKARDS: "Junction with" of course involves physical contact with the line. Are the levels of the two lines different at the point of their proposed junction?

Leslie, Parliamentary Agent (for promoters): The levels are the same.

Clerk: If we had objected on S. O. that they had not scheduled our station, it would have been fatal to the bill. As it is, we are clearly land-owners whose property is affected, and S. O. 134 ["in what cases railway companies to be heard"] gives us a general *locus standi*. (*Caledonian* case, 2 Cliff. & Steph. 256; the "*Post*" case, 1 Cliff. & Steph. 62.)

Mr. RICKARDS: Do you say that in joining the line you necessarily take the land of a railway company?

Clerk: In order to make the junction you must enter upon the premises and interfere with the rails of the company. Here, in order to make a junction with our rails, they must take down a high wall between the end of our rails and the road, and that wall is on our land.

Mr. RICKARDS: As there is no power to take the land, they could not appropriate it.

Clerk: Under the 5th section the company may take and use such of the lands delineated on the plans and described in the book of reference as may be required for making the railway.

Mr. RICKARDS: Therefore they cannot take your land compulsorily, because you might say "it is not described in the book of reference."

The CHAIRMAN: The question is, whether they would not be trespassers the moment they attempted to carry out the plan?

Clerk: The question is whether, if the bill passed, they would not be authorised to take the lands, although they are not described in the book of reference, as we have omitted to defeat their scheme by objecting at the proper stage. At all events, the point is so doubtful that we ought not to be shut out from a hearing. By proposing a junction with our line they admit the taking of our property to a certain extent.

Leslie (in reply): No compulsory power over the petitioners' land is sought by the bill, the plan, or the book of reference. As to our alleged non-compliance with S. O., all that is required is to state the termini of the undertaking specifically in the notice and in the bill. This has been amply done without the slightest reference to the petitioners. As a matter of fact, the words "a junction with the Great Southern and Western Railway" might be perfectly well omitted from section 5 altogether. The alternative description "and terminating on the east side of the mail road from Tralee to Listowel, 33 yards, measuring along said mail road," are quite sufficient.

The CHAIRMAN: You maintain that you have given such a description as would have satisfied any objection on S. O.?

Leslie: Yes; and that as the bill gives no compulsory power of taking land, the junction with the Great Southern and Western railway can only be made with their consent.

Mr. BRISTOWE: You contend that your bill, even if carried in the form in which it now stands, would not enable you to make a junction with the Great Southern and Western at all?

The CHAIRMAN: Because you have only used half the machinery which makes compulsion. You have not scheduled them in the book of reference?

Leslie: That is so. We do not touch an atom of land of the Great Southern and Western.

Mr. RICKARDS: You must give some meaning to the words, "junction with the Great Southern and Western?"

Leslie: The *Dundalk and Greenore* case was entirely different, because there the company's land was scheduled. Anyhow, the petitioners are not entitled to a general *locus standi* as their lands are not scheduled to be taken compulsorily.

Mr. BRISTOWE: You say the bill is to be read as if the words, "by a junction with the Great Southern and Western," were not in it at all?

Leslie: Yes. Although our plans show a junction, it can only be effected by consent.

Locus standi Allowed.

Agents for Bill, Martin & Leslie.

Agents for Petitioners, Sherwood & Co.

LONDON AND SOUTH WESTERN RAILWAY (No. 2) BILL.

Petition of SOUTHAMPTON AND ITCHEN FLOATING
BRIDGE AND ROADS COMPANY.

18th June, 1873.—(Before Mr. BRISTOWE, M.P.,
Chairman; Mr. RICKARDS; and Mr. BONHAM-
CARTER.)

Railway—Powers for Taking Lands—Floating
Bridge Company—Interference with Roads—
Access to Bridge—Road Authority—Representa-
tion—Distinct Interest—Alleged prior Admi-

sion 'of Petitioners' Locus Standi—Public or Private Road—Dispute as to—Evidence—Rights of Neighbouring Lessees, Clause for Extinguishing—Reply Allowed upon Evidence.

A railway company promoted a bill authorising them to take lands adjoining certain roads which led to a floating bridge, and to extinguish all individual rights over another road which the promoters had purchased from the corporation of Southampton. The bill was opposed by the bridge company on the ground that it would impede the access from the town to the bridge, and would pave the way for further obstruction hereafter. Evidence was called on both sides—by the promoters, to prove that the road purchased by them was private, and that they merely sought to put an end, once for all, to the supposed rights of certain individuals; by the petitioners to prove that it was a public road, and that they were particularly interested in keeping it open, as it formed an important means of access to their bridge. No special rights or control over any of these roads were, however, shown by the petitioners, and the *locus standi* of the corporation of Southampton as the road authority was not disputed by the promoters:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they are not the owners, occupiers, or lessees of, nor have they any interest in any of the lands sought to be taken under the bill; (2) the St. Lawrence Road referred to in the petition, is a private road, and the petitioners have no rights over it; (3) if the road be a public one, the petitioners have no special rights or control over it, and are not the proper representatives of the general public; (4) no powers are sought by the bill over the Itchen Bridge Road, or the Marsh Lane, or Chantry Road, mentioned in the petition; (5) in any case the petitioners have no special rights over these roads; (6) they are not affected by, and (7) do not show that they are interested in the objects and provisions of the bill.

Little, Q.C. (for petitioners): The railway company seek by the bill to stop up the St. Lawrence Road, extinguishing "all public and private rights of way" over it; and they also propose to purchase a quantity of land on either side of the Itchen Bridge Road. The company's railways are now carried on the level across Itchen Bridge Road and the Marsh Lane, or Chantry Road. The Itchen Bridge Road is

one of the main roads in Southampton, and leads from the main street in the town to our floating bridge and ferry over the Itchen, which communicates on the other side with an important district. The traffic on the road is very large, and the road is continually obstructed at the level crossings by the company's trains. These blocks are in some degree relieved by means of the St. Lawrence Road, which it is of the greatest importance to keep open, but if the company acquire the lands scheduled to the bill, they will soon seek powers to form further communication across the Itchen Bridge Road which severs these lands. The Marsh Lane is also a main line of communication between the centre of the town and our floating bridge, and is likely to be further obstructed by the company's lines, if they obtain the lands contiguous to it, as they seek by the bill. The company ought to be compelled to carry their lines over these roads by means of bridges. The promoters say that the St. Lawrence Road is a private road, but we satisfied the Committee of the House of Lords that it is a public road. We are entitled to be heard against the proposal to shut it up, as representing the people who use our ferry, and who are not represented by the corporation; we are also entitled to a hearing as private traders. (*Lancashire and Yorkshire, &c., Railway Bill*, 2 Cliff. & Steph. 173.) The *locus standi* of the corporation is admitted, but we have a distinct interest from theirs as in the case cited.

Mr. RICKARDS: Were the corporation heard before the House of Lords?

Little: No; the sanction of the requisite majority of the council had not then been obtained. The railway company in their correspondence with us have admitted we have an interest entitling us to be heard, and I submit that such admission stops them from afterwards objecting to our *locus standi*. If they had written to us allowing in so many words that we had a *locus standi*, that evidence would be unquestionably admissible, and this correspondence is admissible as a strong recognition of our *locus standi*.

Clerk, Q.C. (for promoters): These letters cannot be used as admitting on our part that the petitioners have a *locus standi*, but they may be read *quantum valeant*.

Little (after reading the letters): The correspondence treats us as people who have an interest in our own right in the preservation of the road and in maintaining proper communication over it.

Mr. RICKARDS: There is no recognition of you as petitioners entitled to a *locus standi*.

Little: As to the St. Lawrence Road we can prove that it is a public road, and that it has been used by the public for years without interruption.

[Conflicting evidence on this point was called by petitioners and promoters.]

Clerk (in reply): Whether the St. Lawrence Road is public or private, the petitioners have no right to be heard, as the bill does not affect them or their bridge. They were the original constructors of the road, but in 1844 they conveyed it to the corporation who are the owners of the Marsh estate, and who, as the road authority, have alone the right to be heard. The bill gives us no

power whatever to close the road, but as certain occupiers on the Marsh estate have claimed rights over it, under their leases from the corporation, we have inserted clause 41 in order to extinguish all private rights whatever. This clause is what petitioners really appear upon. With respect to the Itchen Bridge Road, the corporation are the only persons who can petition. In the *Lancashire and Yorkshire* case, the merchant who petitioned showed a special injury. The petitioners here have no right to oppose a bill which simply extinguishes private rights over a private road as this is.

[*Little* was then heard in reply, arguing that the evidence showed the road to be a public road.]

Locus standi Disallowed.

Agents for Promoters, *Dorington & Co.*

Agents for Petitioners, *Simson & Wakeford.*

MERSEY DOCKS AND HARBOUR BOARD (No. 1) BILL.

Petition of (1) **MASTERS AND OWNERS OF VESSELS.**

2nd April, 1873.—(Before Mr. BONHAM-CARTER, Chairman of Ways and Means, in the chair; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Preliminary Objection—Inaccurate Description of Petitioners, by Promoters—Notices of Objection, alleged to be defective—Identification of Petitioners—Appearance, effect of.

A petition being presented by certain masters and shipowners against a docks bill, notice of objection was served by the promoters who, in the heading to such notice, inaccurately described the petitioners in terms applicable to another class of masters and shipowners who did not petition:

Held, upon preliminary objection taken on behalf of the petitioners, that they were sufficiently identified in the notice; that by appearing in support of their *locus standi* they had taken the description to themselves; and objection over-ruled accordingly.

Pembroke Stephens (for petitioners): In the heading of the notices of objection, the petitioners are described as "masters and owners of vessels trading in and upon the upper part of the river Mersey." That is an improper description. We are, as we describe ourselves in our petition, masters and owners of vessels "trading to and from" the upper parts of the Mersey. It so happens that there are traders who would answer

the description in the notices of objection; and I submit that this flaw is fatal to the objections.

Mr. RICKARDS: The question is whether the heading is sufficient to identify the petitioners?

Pope, Q.C. (for promoters): There is no other petition from any persons to whom the description of owners of vessels "trading in and upon" the Mersey would apply.

Mr. RICKARDS (to *Stephens*): By coming here to support the *locus standi*, you take this description to apply to the petitioners for whom you appear.

Stephens: The appearance of petitioners where the objections are defective cannot be relied on for curing the defect. In many cases parties have appeared on objections which have been held to be bad after such appearance.

Objection over-ruled.

Petition of (1) **MASTERS AND OWNERS OF VESSELS.**

Docks and Harbour Board—Power to construct new Works—Borrowing Money—Rates as Security—Masters and Owners of Vessels—Application of rates—Dock and Harbour rates distinguished—Representation—Qualification of Electors—Non-Electors—Exemption, repeal of—Change in Status—Former Acts.

A bill promoted by the Mersey docks and harbour board for constructing new works, and for raising money for that purpose on the security of the harbour rates, was opposed by masters and owners of vessels trading to and from the Mersey, but not using the docks. The promoters sought to exclude the petitioners on the ground that the board was in part composed of representatives of shipowners, elected by the class to whom the petitioners belonged. It was, however, alleged that the petitioners, although shipowners using the harbour, had not the qualification requisite to make them electors:

Held, that under these circumstances, the doctrine of representation not applying, and their interests being affected, the petitioners were entitled to a *locus standi*.

This was a bill "to authorise the Mersey docks and harbour board to construct new docks and other works on the Liverpool side of the river Mersey, and to borrow monies for that purpose."

The *locus standi* of masters and owners of vessels was objected to, because (1) their land, property, rights or interests will not be interfered with by the bill; (2) they claim to be

heard on the ground that sections 239, 242, 243, and 244 of the Mersey Dock Acts Consolidation Act, 1858, are affected by the bill, but such is not the case; (3) they are only interested (if at all) as dock ratepayers, and in that capacity they are represented by the promoters, of whom 24 out of 28 members are elected by the dock ratepayers; (4) they are not affected by the provisions of the bill; (5) nor does their petition show such to be the case.

Stephens (for petitioners): The trade of the Mersey is of two kinds; one class of vessels use the Mersey, but not the docks; the other use the docks mainly. My clients do not use the docks, but pay harbour rates (not dock rates) to the amount of £3,500 per annum. We are protected by the Act of 1857, section 56, from paying any dock rates when we do not actually use the docks. The Consolidation Act of 1858, section 239, restricts the application of harbour rates to certain objects, and sections 242, 243 and 244 of that Act provide machinery for revising the harbour rates and for taking the accounts. The bill proposes to do away with the restriction imposed by section 239, and alters the forms prescribed by sections 242, 243, 244 in the Act of 1858. Hitherto the vessels using the docks have been liable to contribute proportionably with the vessels not using the docks to the expenditure on lights and general harbour purposes, but we allege that the bill will alter this state of things to our injury. Then the bill provides for borrowing, on the security of the harbour rates, towards which we contribute, money to build docks, although the Acts of 1857 and 1858 protect us from contributing to any expenditure for the purposes of the docks. We are not represented by the Mersey dock and harbour board. By clause 18 of the Act of 1857 those only are electors who pay annually in the matter of rates £10 to the board, but the petitioners pay only an average sum of 11s. 6d. per annum. (*Margate Pier and Harbour Bill*, 2 Cliff. & Steph. 200.)

Pope, Q.C. (in reply): As to representation, in 1858, the *locus standi* of merchants, shipowners, and dock ratepayers of Liverpool, against the Mersey Dock Bill, was disallowed, on the ground that they were represented by the trustees who promoted the bill. These petitioners do not avoid falling under that principle because they fail to qualify as electors. The bill does not alter the legal status of the petitioners. It is for the construction of works and the borrowing of money for those works, and does not interfere with rates or dues, or with the machinery for revising the harbour rates. Section 2 expressly exempts the harbour rates from any liability as to borrowing the money; and whatever the petitioners' position was under the Act of 1858, it will be the same now. The exemption from contributing to the expenditure on docks claimed by the petitioners, under the Acts of 1857 and 1858, is kept alive by our bill, and to make it perfectly clear, we have put in clause 7 that these docks shall be docks within the meaning of the Act of 1858.

Mr. RICKARDS: Though you may not apply the harbour rates to the construction of the docks, may you not put in execution the 8th clause of this bill, which empowers you to borrow money on the security of the harbour rates?

Pope: We can do no more than we can do under the Act of 1858. Why should we not raise money upon the security of the harbour rates, unless we are prevented by that Act? Our raising money on the security of the rates is no injury to the petitioners, and we are entitled to do so on all our rates unless any are expressly excepted; if such exception exists, it will still exist, notwithstanding the bill.

Locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Sherwood & Co.*

PETITION OF (2) BIRKENHEAD IMPROVEMENT COMMISSIONERS.

Docks and Harbour Board—Power to Construct New Works—Raising further Capital—Rates as Security—Town Improvement Commissioners—Local Authority—S. O. 135—Non-completion of Works—Town injuriously affected by—Bondholders—Specialty Creditors—No Specific Charge on Lands, &c.

A bill proposing, *inter alia*, to raise further capital on the security of dock and harbour rates for the construction of new docks at Liverpool, was opposed by the Birkenhead improvement commissioners on the ground (1) that ratepayers at Birkenhead would be injuriously affected by the non-completion of works there, for which the promoters had obtained statutory powers; and (2) that the petitioners' interests as bondholders in the promoters' undertaking would be injured by this further charge upon revenue, a charge which would become unnecessary if the Birkenhead docks were completed. There was, however, nothing to distinguish the case of petitioners from that of ordinary creditors, and nothing in the bill specially affecting them in that character or as the local authority:

Held, that they were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, property, or rights of theirs are affected by the bill; (2) they have no rights of any kind with regard to the low water basin; (3) the town of Birkenhead cannot be injuriously affected by the bill within the meaning of the S. O.; (4) the fact that these petitioners are holders of bonds of the Mersey docks and harbour board gives them no right to be heard, as they are merely creditors without any specific charge on the land or property of

the board; (5) if they were dock ratepayers, which they are not, they have no right to be heard, since they would, as electors of the board, be represented by it; (6) they are not affected by the bill; (7) if they were, the petition does not show anything to entitle them to a hearing.

Salisbury (for petitioners): The local management of Birkenhead is vested in us by statute. We are also dock ratepayers and holders of the bonds of the Mersey docks and harbour board. It is true that no property of ours is taken; but as the local authority we have a right to appear to protect the interests of our ratepayers. (*Brighton Railway Bill, Petition of Corporation of Brighton, 1 Cliff. & Steph. 144.*) The preamble of the promoters' Act of 1858 recites the expediency of completing the docks and works at Birkenhead, as expeditiously as possible. It is of great importance to us, and to owners of property at Birkenhead, that the docks there should be completed and utilised as that Act contemplated; and there would then be no need to borrow money for dock extension at Liverpool. In 1866 we consented to an Act obtained by the Mersey docks and harbour board for converting their low water basin into a wet dock. This basin is situated on land bought from the Birkenhead commissioners, but the promised conversion has not been effected, and the basin has been allowed to silt up, without providing the intended substitute. We maintain that Birkenhead is injuriously affected by the non-completion of the docks there within the terms of the Act of 1858, and by the non-fulfilment of our understanding with the promoters as to the low water basin in the Act of 1866, which we did not oppose, relying on their *bona fides*. On these grounds, as the local body representing the ratepayers, we are entitled to be heard. Then we hold some of the bonds of the board, and we say that if the promoters do not utilize the docks which they already have, but add to their already large capital £4,100,000 more, which is to be a charge upon the rates, our security as bondholders will be materially prejudiced. (*Caledonian Railway Company, Petition of Messrs. Baird, 2 Cliff. & Steph. 257.*)

Mr. RICKARDS: Are these bonds strictly speaking, or are they charges upon the rates?

Pope, Q.C. (for promoters): They are not mortgages; they are defined in the Act as simple bonds; the holders are in the position of special creditors. This is a case affecting the whole trade of the Mersey. In other cases where the Birkenhead commissioners have been heard against the board, works have been proposed to be constructed on the Birkenhead side of the river. Here all that is proposed to be done is on the Liverpool side. The petitioners claim to be heard (1) as ratepayers, (2) as bondholders, (3) as a municipal authority. With respect to (1) they vote as ratepayers, and are therefore represented by the body of which they are constituents; (2) as bondholders they are excluded by your decision in the *Neath and Brecon* case. (1 Cliff. & Steph. 167.) Could debenture holders oppose a bill for the construction by a railway company of 100 miles of additional line? If the Birkenhead commissioners are heard here, so may every bondholder

against a money bill of any railway. As (3) a municipal authority, they can, under S. O. 135, only be heard when something is proposed to be done interfering directly with their town. (*Dorking Gas Bill, 2 Cliff. & Steph. 196.*) It is not enough to say "our town will be injured because you propose to spend money elsewhere." As to their not opposing our bill in 1836, there was no Parliamentary obligation or bargain between us.

The CHAIRMAN: They say that they did not oppose the application for the Act, relying on your *bona fides*.

Pope: That does not make a contract which entitles them to be heard. The works contemplated by the Act of 1858 have all been completed, and no time whatever is limited in the Act of 1866 for the conversion of the low water basin into a wet dock.

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Petition of (3) GREAT WESTERN RAILWAY.

Docks and Harbour Board—Railway Company—Agreement—New Works—Delay in completing works already authorised—Resulting injury.

The Great Western railway company alleged that in 1866 they withdrew their opposition to a bill enabling the promoters to discontinue certain works, begun under an Act obtained in 1858, the condition of such withdrawal being that the promoters should convert a certain low water basin at Birkenhead into a wet dock. This conversion was provided for by the Act of 1866. The condition, however, remained unfulfilled; the dock was not completed; and the promoters now sought powers to raise money for the construction of more docks at Liverpool. The petitioners objected that, if additional capital were raised under the bill, it would retard the completion of the dock authorised in 1866, and their interests as carriers of traffic to Birkenhead would suffer by this further delay:

Held, that the petitioners could not be heard.

The petitioners had a railway running up to the promoters' docks at Birkenhead. Their *locus standi* was objected to, because (1) their lands, railway stations, and accommodation are not interfered with; (2) the bill does not affect the town of Birkenhead, and if it did, they could not be heard; (3) the low water basin referred to in the petition is not interfered with, and if it

were their rights with reference to it are the subject of an agreement with the promoters which is sought to be confirmed by a bill—(The Mersey Docks and Harbour, No. 2)—now before Parliament; (4) they are in no way affected by the provisions of the bill.

Rodwell, Q.C. (for petitioners): We ask to go before the Committee, and represent to them that before the Mersey dock and harbour board are allowed to spend at Liverpool the £4,100,000 which they seek to raise by this bill, they shall do for the public and for the railway companies that which Parliament believed they were about to do at Birkenhead, when in 1866 they asked permission to abandon the low water basin there and convert it into a wet dock. We have a wrong and no remedy. We cannot compel the promoters to carry out this work, but when they come to Parliament we have a right to ask that, before they receive the fresh powers now sought, the Mersey board should be compelled to act up to the obligation they incurred both under our agreement with them, and under the Act they obtained through our concession in 1866. Though we cannot enforce that agreement at law, we should be injuriously affected if this bill were passed.

The CHAIRMAN: The Court will not trouble Mr. Pope to reply on this case.

Locus standi Disallowed.

Agents for Petitioners, Young & Co.

Petition of (4) IRISH STEAMSHIP ASSOCIATION.

Raising of further Capital—Steamship Association—Ratepayers—Prospective Reduction of Rates—Benefit secured under former Act abolished—Alleged Statutory protection—Injury too remote.

The raising of further capital by the Mersey docks and harbour board was objected to by the Irish steamship association, on the ground that the prospect of a reduction of rates on their vessels, such reduction being provided for under an existing Act, would be diminished if the promoters were allowed to borrow more money under the bill:

Held, that the alleged injury was too remote, and *locus standi* disallowed.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands, property, &c., of theirs will be affected by the bill; (3) they only claim to be interested as dock ratepayers, and in that capacity are represented by the board whom they help to elect; (4) the rates and dues leviable by the board under existing Acts will not be altered by the bill.

Pembroke Stephens (for petitioners): The steamship companies and trading interests represented by these petitioners have an important protection under section 284 of the Act of 1858, which provides that the Mersey docks and harbour board, after payment of interest on borrowed monies, annuities, and so forth, shall apply all surplus money, from time to time, in repaying the principal of the borrowed money, and in purchasing and extinguishing annuities; and in such case they are required to reduce the rates. Now if they are allowed to borrow the large sum sought to be raised under the bill, this prospect of reduced rates will be necessarily postponed, and we shall be deprived of an existing statutory protection. We are greatly interested in this reduction, as we already pay higher rates than any other class of ratepayers.

Mr. RICKARDS: There is a potentiality of reduced rates of which you are deprived by the bill. Your case is that of a gas consumer petitioning against a gas company who ask for power to raise further capital.

Pope, Q.C. (for promoters): If every ratepayer is entitled to come and say that because a company is going to raise more money, his rates will be kept up and he will not have the benefit of a potential reduction, in future every gas consumer will have a right to be heard upon every money bill promoted by a gas company.

Locus standi Disallowed.

Agents for Petitioners, Bryden & Robinson.

METROPOLITAN AND ST. JOHN'S WOOD RAILWAY.

Petitions of (1) OWNERS, &c., IN THE DISTRICT; (2) A. H. CROWTHER; (3) MDLLE. TIETJENS, and OTHERS.

30th April, 1873.—(Before Mr. BONHAM-CARTER, M.P., Chairman, of Ways and Means, in the chair; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Railway—Additional Lines of Rail—Introduction of Goods Traffic—Repeal of former Act, prohibiting—Lands' Clauses Act, 1845, sections 68 and 92—Injury to Houses—Property Injured though not taken by Railway—Underpin Houses, Power sought by Railway Company to—Vibration, structural damage from.

A bill for widening and enlarging an existing railway proposed to repeal, by its 23rd clause, a proviso in a former Act, which prohibited goods' traffic on the line. The bill also enabled the promoters to underpin houses, &c., without being compelled to purchase them, notwithstanding section 92 of the Lands' Clauses Consolidation Act, 1845. It was opposed as to all these provisions by owners of houses in the district through which the line passed

Held, that the petitioners had a *locus standi* against section 23, and so much of the preamble as related thereto.

The *locus standi* of the respective petitioners was objected to on similar grounds, viz., because (1) they do not allege that they are, nor are they owners, lessees, or occupiers of any land or property proposed to be taken by the bill; (2) section 88 of the Metropolitan and St. John's Wood Railway Act, 1864, was not inserted in the bill at the instance of the petitioners, nor of any other landowners or persons, but solely at the instance of the company and for their benefit; (3) the petitioners do not allege any ground which entitles them to be heard according to practice.

Shiress Will (for petitioners, 2 and 3): As regards vibration, the case of all the petitioners is the same. In 1871 the same question was argued in this Court between the same parties on the same grounds, and the decision of the Court then was that we had a *locus standi*. (2 Cliff. & Steph. 189.)

Mr. ADAIR: The governors of St. Bartholomew's hospital were allowed a *locus standi* against one of the Metropolitan deviations, where no land was taken, on the ground that it would injuriously affect certain wards of the hospital.

Mr. RICKARDS: What was the decision in the House of Lords in the case of *Brand v. Hammersmith Railway Company*, referred to in the report of this case in 1871?

Will: That where land was not actually taken, no compensation could be claimed under section 68 of the Lands' Clauses Act in respect of injury from vibration, smoke, and so on.

Holmes, Parliamentary Agent (for petitioners, 1): We are owners, lessees, or occupiers (238 in number) of houses in the district traversed by this railway. By the Metropolitan and St. John's Wood Railway Act, 1864, section 88, it was provided that the company should not carry heavy goods on their railway. Clause 23 of the bill repeals this section. This is the third session in which the same attempt has been made. It has failed on two previous occasions. Even now we are seriously disturbed by the passenger traffic of the railway, and if goods' trains are allowed, the houses will be endangered and rendered uninhabitable on account of noise and vibration. The repeal of section 88 in the existing Act is in direct violation of the compact upon which that Act was obtained, and in reliance upon which many of the petitioners have purchased from the company the freehold, or taken leases of houses. By clauses 5 and 9 of the bill, power is given to the company to widen and enlarge part of the present line within a term of five years. This power would enable the company to take up parts or the whole of the main road, which would greatly injure the residents on either side. Clause 5 also enables the company to underpin or otherwise strengthen any houses, cellars, or buildings within 100ft. of the railway and works authorised by the bill; and notwithstanding anything contained in the Land Clauses' Consolidation Act, 1845, sec. 92, the company are not

to be compelled to purchase any house or building with which they may interfere. The only difference between this case and that decided in 1871 is the additional power to underpin, which strengthens our claim. *Brand v. Hammersmith Railway Company* decides that we should have no means of protecting ourselves after the Act is passed; our only safeguard lies in opposing the bill.

Wyatt, Parliamentary Agent (for promoters): The allegations in petition (1) are too vague and indefinite. There is no averment from beginning to end that the underpinning which we propose will injuriously affect the petitioners. No extra vibration will be caused by repealing section 88 of the existing Act. It is the engine, not the traffic, which causes vibration, each engine weighing 42 tons. *Brand v. Hammersmith Railway Company* is in our favour, as it decides that parties are not entitled to compensation for vibration. The statement that some of these petitioners bought property on the understanding that section 88 in the Act of 1864 should not be repealed, is not true. The Act formed no part of the contract or conditions of sale.

Will: Your notices of objection do not traverse our statement on this point.

Locus standi of all the Petitioners Allowed against Clause 23, and so much of the preamble as relates thereto.

Agents for Bill, Wyatt & Co.

Agents for Owners, &c., in the District, *Holmes & Co.*

Agent for A. H. Crowther and *Mdlle. Tietjens* and Others, *E. Walmisley*.

MIDLOTHIAN WATERWORKS BILL.

Petitions of (1) the EARL OF WEMYSS AND MARCH; (2) JOHN MENZIES BAILLIE (as *curator bonis* to Alexander Horsburgh.)

18th June, 1873.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Water Company—Riparian Owners—Alternative Scheme—Practice—Landowners' Locus Standi—Allegations in Petition, whether irrelevant to Bill—Locus Standi not limited in respect of—Alleged irrelevancy of Petition—Left for decision by Committee.

A bill for supplying Edinburgh with water, from a stream more than 30 miles distant, was opposed by riparian owners, some of whose land would be taken, on the ground that their property would be injuriously affected and endangered by the proposed works. The

petitioners also alleged that the plan proposed was unnecessary, and suggested an alternative scheme :

Held, that, the petitioners being entitled as land-owners to appear generally against the bill, their *locus standi* could not be limited in respect of allegations relating to the alternative scheme, the Court holding that it was for the Committee to decide whether such allegations were or were not relevant to the bill.

The *locus standi* of both petitioners was objected to on identical grounds, viz., because (1) they say there is a better scheme (i.e., the Moorfoot scheme) for supplying Edinburgh with water, but no bill is before Parliament for carrying out any such scheme; a scheme of which no details are given, and for which no plans have been deposited for public inspection, cannot be set up as a ground of opposition, and the promoters cannot be required to meet these general allegations; (2) the *locus standi* of petitioners should be limited to their objection to the Manor water scheme to which this bill relates.

Clerk, Q.C. (for petitioners): We own lands, which the promoters ask leave to take under the bill, and we not only object to such land being taken, but urge that the proposed reservoir and embankments would be dangerous to our property. There is a plentiful supply of water nearer to Edinburgh. The promoters should avail themselves of that supply, and there is another scheme by which they may do so. The bill is brought forward by speculators, who are not the proper persons to promote it. They want this Court to decide that we shall be excluded from giving evidence before the Committee to show that the scheme is not only injurious but unnecessary. This is the reason why the promoters object to our mentioning an alternative scheme.

Granville Somerset, Q.C. (for promoters): The petitioners are not entitled to be heard on those parts of their petitions which set up an alternative scheme.

MR. RICKARDS: The practice of the Referees is not to say upon what parts of their petition petitioners shall be heard. We only say in certain cases against what portions of the bill they shall be heard.

Somerset: It comes to the same thing generally; but in this case there are things in the petition which are not in the bill, and on which we say the petitioners ought not to be heard; these must be struck out of the petition.

MR. RICKARDS: We do not deal with petitions at all. If there are parts of the petition which do not touch any portions of the bill, clearly these parts would be irrelevant before the Committee.

Somerset: We shall be told before the Committee that we ought to have taken that objection before the Referees. In the House of Lords this alternative scheme was raised by various petitioners, and the House of Lords unanimously decided that so far they should not be heard.

MR. RICKARDS: That objection must be addressed to the Committee on the bill. It is for them to decide whether the petitioners shall be allowed to set up the alternative scheme. We cannot strike it out of the petition.

Locus standi of both Petitioners Allowed.

Petition of (3) **PROVOST, MAGISTRATES, AND TOWN COUNCIL OF PEEBLES.**

Water Company—Town Council—Local Authority—Owners and Lessees—"Superiors"—Water Mill—Bridges—Fisheries—Reservoirs and Embankments—Danger apprehended from—Source of Water Supply, interfered with—Lands' Clauses Act, 1845—Abstraction of Water—Alternative Scheme—Practice—Irrelevancies alleged in Petition—Question for Committee.

The bill was also opposed by the town council of Peebles as superiors of certain mills which would be interfered with, and upon the ground that they were owners of a bridge and fisheries, which would be injuriously affected; that certain reservoirs and embankments authorised by the bill would also injuriously affect the petitioners, and might be dangerous to the borough; that the stream from which the supply was to be drawn was the only source to which they themselves could look for an increased supply should they need it; and that the promoters might, if the bill were passed, require at any future time a much larger quantity of water owing to increased population or extension of district, in which case the injury now done to Peebles would be further increased:

Held, that the petitioners were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their lands and property are not sought to be taken under the bill; (2) their rights and interests will not be interfered with; (3) neither the borough rates nor the interests of the borough will be injuriously affected; (4) as superiors, the petitioners do not represent the owners of mills, &c., who are really the beneficiaries; (5) no part of the bridge, or fisheries of which they are owners can be taken or interfered with; (6) the proposed reservoirs will be constructed at such a distance from Peebles ($9\frac{1}{2}$ and $6\frac{1}{2}$ miles respectively) as to avoid all danger, and the general law provides amply in such cases; (7) the petitioners object to the taking of the Manor water (which flows into the Tweed two miles westward of Peebles), because they may require it themselves,

but they have a plentiful supply of water already from other sources nearer to Peebles; (8) there is no bill before Parliament for extending the supply in the district specified in the bill, and the petitioners cannot set up an alternative scheme; (9) they possess no interest entitling them to be heard according to practice; (10) even if entitled, they can only be heard against clauses.

Clerk, Q.C. (for petitioners): We are superiors of certain mills at Peebles, and the feu duties of these mills produce £62. If the water be taken as proposed, the mills would become useless to the tenants, and we should not get our feu duties.

Mr. RICKARDS: The tenants would still be liable in law to pay the feu duties.

Clerk: The abstraction of water will damage our fisheries, though they are not otherwise interfered with. The stream from which the supply is to be taken, is the only one to which we can look for an additional supply, which one day we shall certainly require. There is a plentiful supply of water nearer to Edinburgh, and the promoters should avail themselves of that source.

Granville Somerset, Q.C. (for promoters): As superiors, the petitioners can have no *locus standi*. The lessees have a *locus standi*, but they do not petition, as we have come to terms with them. The Lands' Clauses Act, 1845, defines owners, and superiors cannot come under that definition. The petitioners are not entitled to be heard on those parts of their petition, which set up an alternative scheme. There is a distinct decision to that effect (*Cheltenham Water Bill*, 1865; *Shiress Will*, 289) at the time when questions of estimate, construction, and quantity and quality of water came before the Referees.

Mr. BONHAM-CARTER: That case was not before the *locus standi* Court.

Mr. RICKARDS: The Referees were sitting then as a *quasi* Committee having power to inquire into the facts of the case. It was not the *Locus Standi* Court. As to the possibility of danger to the borough from the bursting of the proposed reservoirs, it has been shown that the petitioners may be otherwise injuriously affected by these works, and therefore it is unnecessary for us to enquire into other possible sources of injury.

Locus standi Allowed.

Agents for all the Petitioners, *Connell & Hope*.

Agents for Bill, *Martin & Leslie*.

NORTH BRITISH RAILWAY (ADDITIONAL WORKS, &C.) BILL.

Petition of the PROVOST, BAILIES, TREASURER, AND COUNCIL OF HELENSBURGH, AS SUCH AND AS POLICE AND HARBOUR TRUSTEES, AND SIR J. COLQUHOUN, BART., AND MR. WALKER.

28th April, 1873.—(*Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.*)

Railway Pier—Disuse of Petitioners' Pier—Resulting Loss of Revenue—S. O. 156—["Railway Company not to acquire Docks, &c."]—Local Authority—Royal Burgh—Competition—Landowners—Joint Petition—Landowners' Allegations not Traversed in Objections—Quantum of Injury.

The harbour and pier of Helensburgh, a royal burgh, were vested by statute in the town council, who had borrowed money on the security of the harbour and pier rates. The North British railway company had hitherto used the corporation pier, paying tolls in respect of each passenger, but now proposed to construct a pier of their own, connected with their line, and restricted to their traffic:

Held, that, as abstraction of traffic and consequent loss of revenue by the corporation were admitted by the promoters, the corporation were entitled to oppose the bill on the ground of competition. A *locus standi* was also allowed to landowners, whose property would be interfered with, and who joined in the petition of the corporation on that and other grounds.

The *locus standi* of the petitioners was objected to, because (1) the bill does not empower the promoters to take any land or property of theirs; (2) the pier mentioned in the bill is to be built outside the boundaries of Helensburgh: the bill specially prohibits the promoters from taking tolls thereat, and its construction does not entitle the corporation to be heard on the ground of competition; (3) the bill does not empower the promoters to interfere with any roads, &c., under the control of the corporation; (4) Sir J. Colquhoun and Mr. P. Walker have no such interest in the existing pier as entitles them to be heard.

Shiress Will (for petitioners): Sir J. Colquhoun and Mr. P. Walker are landowners whose property will be taken or interfered with.

Mr. RICKARDS: The promoters do not take any objection to their right to be heard as landowners.

Will: No. In the case of the *North Metropolitan Tramway Bill* (1 *Cliff. & Steph.* 168), the allegation that the Great Eastern railway company were landowners not being traversed, the Court at once gave them a *locus standi*.

Locus standi of Sir J. Colquhoun and Mr. Peter Walker *Allowed*.

Will: The corporation petition on three grounds—(1) competition; (2) as the road authority, certain roads over which they have control being interfered with by the bill; and (3) as the municipal authority. The new pier will not develop any new traffic; it will only abstract a portion of the traffic which at present goes to our pier, and in that manner it will injure us. The case is clearly one of competition. (*North*

Kent Railway Bill, Smeth. 186; *Northampton and Banbury Junction Railway Bill*, Ib. 158; *Thames Subway Bill*, Ib. 162; *Kew and other Bridges Bill*; 1 Cliff. & Steph. 118.) Under S. O. 156, when a railway company proposes to construct a pier, the Committee are directed specially to report why the restriction against such powers should not be enforced. Clearly, therefore, the House of Commons intended that such questions should be considered by Committees; but no one will be heard against this proposal unless we are heard.

The CHAIRMAN: We will hear counsel for the promoters on the question of competition before you deal with the two other grounds of opposition.

Clerk, Q.C. (for promoters): There must be a substantial competition in order to induce the Court to give a *locus standi* on that ground, but the petitioners here will suffer only a slight loss under the bill. The pier we propose to construct will be a part of our railway system. It will be confined to our railway traffic; we shall charge no rats for its use; tickets issued at Glasgow will cover both the railway conveyance and the transit by steamer beyond.

Mr. BAISTOWE: You admit that the whole of the through traffic will be diverted by your pier, and that the petitioners will lose some revenue?

Clerk: Yes.

Mr. RICKARDS: The *quantum* is another question.

Locus standi Allowed.

Agents for Promoters, *Sherwood & Co.*

Agent for Petitioners, *Graham.*

PARTICK, HILLHEAD, AND MARYHILL GAS BILL.

Petition of CORPORATION AND BOARD OF POLICE OF GLASGOW.

31st March, 1873.—(Before Mr. BONHAM-CARTER, M.P., Chairman of Ways and Means, in the chair; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Gas Bill—Limited Liability Company Seeking Parliamentary Powers—Municipal Corporation—Board of Police—Limits of Bill Inadequately Defined—Area of Supply—Competition—Invasion of District.

A bill conferring Parliamentary powers upon a gas company (limited), and involving an extension of mains and the right to open up roads within a certain defined district, was opposed by the corporation of Glasgow, both in their municipal character, and as the board of police charged with the control of roads in Glasgow. The corporation were themselves the owners of gasworks, and

possessed under statute the right of supplying Glasgow and certain outside districts which were within the limits of the bill:

Held, that the petitioners were entitled to a *locus standi* on the ground of competition and invasion of district.

This was a bill for incorporating and giving Parliamentary powers to the Partick, Hillhead, and Maryhill gas company, limited, who had registered themselves under this title in 1872, under the Companies' Acts. The promoters were already supplying Maryhill, and now sought to extend their district.

The *locus standi* of petitioners was objected to, because (1) no property, rights, or privileges of theirs are interfered with; (2) the city and royal burgh of Glasgow are not included within the limits of supply under the bill; (3) the petitioners cannot be heard against the bill on the ground of competition in the supply of gas in burghs, districts, and places beyond the Parliamentary and municipal limits of Glasgow; (4) the corporation and board of police have no jurisdiction over roads or streets in places beyond the municipal limits; (5) they have alleged no grounds entitling them to be heard.

Clerk, Q.C. (for petitioners): The 4th clause of the bill describes the limits within which the Act shall be in force, including "other districts or places in the parish of barony of Glasgow." These words really comprise a large portion of the city of Glasgow. In 1869 the Glasgow corporation obtained an Act transferring to them the undertakings of the two existing gas companies, and enabling the corporation to supply gas within the districts supplied by these companies, including Partick and Hillhead. Afterwards, the promoters formed a limited liability company, and under the present bill are now seeking for the first time Parliamentary powers to open up roads and lay mains in the district defined in clause 4. The scheme must involve competition with us, as the area of supply proposed by the bill is practically identical with that which we are authorised to supply, and are now actually supplying, under our Act of 1869. As regards the police board, their grievance is the breaking up of streets within the municipality. The charge and control of streets, thoroughfares, and sewers in Glasgow are vested in this board under the Glasgow Police Act. In this matter the police board represent the ratepayers within the municipality.

Littler, Q.C. (for promoters): There is no pretence for the board of police being heard, inasmuch as the words we use do not include Glasgow.

Mr. RICKARDS: You include in your limits "other districts and places in the parish of barony of Glasgow," without specifying the parts of the barony of Glasgow.

Littler: If we had the slightest intention to introduce the city of Glasgow in our 4th clause we should have named it before naming the burghs of Partick, Hillhead, and Maryhill.

Mr. RICKARDS: The 4th clause enables the promoters to operate in any part of the parish

of barony of Glasgow. There is nothing in the clause to keep you to that part which is outside the district of the board of police.

Littler: With regard to the corporation, they must show that their interests are going to be materially injured. This is only a case of improvement of existing competition, which does not afford a ground of *locus standi*. A joint-stock company already supplying Maryhill and adjoining districts, without Parliamentary authority, is here coming for Parliamentary powers.

Clerk: The case of the *Wandsworth Gas Bill* (2 Cliff. & Steph. 203) is against you.

Mr. ADAIR: A private contractor there sought to go into a district within the limits of an existing company.

Mr. RICKARDS: You are seeking to go beyond the places you are already supplying, and to extend the mains and works of the limited company.

Locus standi Allowed.

Agents for Promoters, *Loch & MacLaurin.*

Agents for Petitioners, *Simson & Wakeford.*

PONTYPOOL GAS AND WATER BILL.

10th March, 1873.—(Before *Mr. ADAIR, M.P.*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER.*)

Petition of INHABITANTS AND CONSUMERS OF GAS AND WATER.

Gas and Water Company—Dissolution and Re-incorporation of Company—Increase of Capital and Powers—Monopoly apprehended—Inhabitants and Consumers—Local Board—Representation—Minority—Distinct Interests—Public Meeting.

A bill for re-incorporating a gas and water company was opposed by certain inhabitants and consumers, who objected to the monopoly which would be created by the bill, and the terms upon which they would be supplied. On the part of promoters it was urged that there was a local board who did not petition, and who were the representatives of inhabitants and consumers:

Held, that the local board, though representing the public interests of the town, were not identified with the interests of private consumers, and that in this case there was a substantial body of opponents who were entitled to a *locus standi*.

In 1862 and 1867 Acts had been passed for incorporating a company which this bill now proposed to dissolve and re-incorporate under the same title with larger powers and capital, for

supplying the town and neighbourhood of Pontypool with gas and water.

The *locus standi* of the petitioners was objected to, because (1) they do not allege themselves to be the municipal or other authority having the management of any town or district injuriously affected; (2) they do not represent the inhabitants or consumers of gas or water in the district proposed to be supplied; (3) no lands, houses, property, and rights of the petitioners will be affected; (4) they are not entitled to be heard according to practice.

Pembroke Stephens (for petitioners): The local board not only do not petition, but are not even referred to by name in the objections. A company cannot exclude from being heard those whom by their bill they intend to supply. The bill proposes to dissolve the present company and to incorporate a new one with increased powers. This will create for the first time a statutory monopoly to which we are entitled to object. We object to the proposed price and quality of the gas, and the rules for the supply of water, and our petition is signed by many of the most influential inhabitants. We have distinct interests, which would in any case entitle us to a hearing in addition to the local board, but now that they do not petition we ought to be heard to protect our interests on such subjects as lighting, &c. In the *Albion Gas Case* (2 Cliff. & Steph. 176), the *locus standi* of consumers was granted by the Court as well as that of the corporation; *a fortiori* it should be granted where the corporation or its equivalent the local board do not petition.

Granville Somerset, Q.C. (for promoters): The petitioners do not represent the inhabitants. Only 175 persons sign out of a population of 30,000 to 40,000, and the districts within a certain persons belong are under the supervision of the local board who do not petition. In addition, the petition does not emanate from any public meeting.

Mr. RICKARDS: Although it is often an ingredient in the case, the Court does not lay down the principle that petitions must emanate from public meetings.

Granville Somerset: At any rate, a petition must be signed by such a number of inhabitants as to represent a fair expression of the opinion of inhabitants.

Mr. RICKARDS: That is so, but as regards the number and quality of the petitioners, we have never gone into the circumstances or manner in which a petition has been got up, as long as we are satisfied that the signatures to the petition are genuine.

Granville Somerset: It is not sufficient for petitioners to say that they are inhabitants, without saying that they represent inhabitants (*Belfast Harbour Bill, Petition of John Ben, 2 Cliff. & Steph. 75*). In the *Albion Gas Bill* consumers were allowed only a limited *locus standi*. If the inhabitants are to be heard, it must be through the local board or the corporation. There are five local boards in the district which we propose to supply, and the petitioners are all represented by one of them. (*Maryhill Street Improvement Bill, 2 Cliff. & Steph. 264; Huddersfield Water Bill, Smith 177;*

Bray Improvement Bill, Ib. 174; Accrington Gas and Water Bill, 1 Cliff. and Steph. 123; and Belgravia and South Kensington Road Bill, Ib. 124.)

Locus standi Allowed.

Agents for Bill, Dorington & Co.

Agents for Petitioners, Sherwood & Co.

RHYMNEY RAILWAY BILL.

Petition of BRECON AND MERTHYR TYDVIL RAILWAY COMPANY.

17th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Railway—Abandonment—Penalties for non-completion of line—Bill to relieve Railway Company from Penalties—Opposing Railway Company—Agreement, violation of—Breach of faith, alleged—Statutory Obligations, evasion of, alleged—Running Powers—New Capital.

In 1864, the Brecon railway company obtained an Act authorising them to make a certain junction unless within a stated period an Act for the construction of the same junction was obtained by the Rhymney company, in which case clauses were to be introduced securing running powers to the Brecon company. The letter of the condition was fulfilled in 1866, when an Act containing these clauses was passed at the instance of the Rhymney company, and thereupon the statutory powers of construction possessed by the Brecon company became of no effect. The line, however, was not made, and in 1871, when the time for completing it expired, the Brecon company promoted a bill empowering them once more to construct the junction. The powers thus sought were rejected by Parliament upon the opposition of the Rhymney company, who in the same year applied to the Board of Trade for authority to abandon their line. This application in its turn was refused upon the opposition of the Brecon company, and the Rhymney company now promoted a bill asking for statutory power to abandon the line, for a remission of the penalties incurred through its non-completion, and also for authority to raise fresh capital. The Brecon company in their peti-

tion alleged, *inter alia*, breach of faith and evasion of statutory obligations, asking for leave to urge in Committee that the promoters should only be allowed to raise fresh capital on condition that they came for fresh powers to complete the junction within a given period:

Held, that the time for constructing the railway having expired, and the object of the bill, as far as it related to this railway, being merely to relieve the promoters from penalties, the rights of the petitioners were not affected under the bill, and no breach of faith was disclosed by it. The *locus standi* of the petitioners was therefore disallowed.

The bill was one authorising the Rhymney railway company to abandon their Caerphilly Rumney branch (the time for completing which had expired) to raise further moneys, and for other purposes. The petitioners alleged that this abandonment would be a breach of faith and of express agreement (scheduled to an Act of 1864) between the promoters and themselves. They further urged that they had running powers over so much of the Rhymney railway as gave them access to Cardiff, but such access was rendered inconvenient and almost dangerous from want of the Caerphilly Rumney branch; that this railway, less than a mile long, and inexpensive, would form an essential part of the only narrow guage communication between Cardiff, on the one hand, and Newport, and the system of railways converging there, on the other, and it was essential to the petitioners and the public convenience that this communication should be maintained and improved. The petitioners also submitted that powers ought not to be granted to the Rhymney railway company to raise further capital, unless upon the condition that they should, within a specified time, not exceeding twelve months, complete and open for traffic the Caerphilly Rumney branch.

The *locus standi* of the petitioners was objected to, because (1 and 2) nearly all their allegations are a mere recital of a past dispute between them and the promoters, and their petition has been presented simply to embarrass the promoters, as is clear from its suggestion, that the promoters should be compelled to make a line which they have neither the pecuniary means nor the statutory power of making; (3 and 4) the petitioners do not attempt to show that any property of theirs is in any way affected by the bill, except indirectly by the promoters not making a line which would aid the petitioners in developing their traffic; (5) no ground or interest is shown entitling the petitioners to be heard consistently with practice.

Coates, Parliamentary Agent (for petitioners) We object to the proposed abandonment as being contrary to an express agreement with us, as inconsistent with statutory rights conferred upon us, and as a breach of good faith.

The Brecon Company's Act, of 1864, authorised them to construct a line practically the same as that now to be abandoned; but section 12 provided that these powers should not be used if within a certain period the Rhymney company promoted a bill for the same object, giving us running powers over their line. The Rhymney company promoted and passed such a bill in 1866, and accordingly our power to make a corresponding line ceased. But their line so authorised in 1866 was not made, and, in 1870, they gave notice of an application to the Board of Trade for an abandonment warrant. Thereupon we promoted a bill which authorised us to make this junction, but the Rhymney company withdrew their application to the Board of Trade, and opposed our bill, succeeding in defeating it in the House of Lords. Thus we were thrown again upon the power and duty of the Rhymney company to make this junction line. After defeating us, however, in Parliament, they again applied to the Board of Trade in 1871, for leave to abandon the line. We were heard against the application; it was refused; now they apply to Parliament for the same authority; and they have the effrontery to say that we have no right to be heard against the abandonment of a line in which we have so vital an interest. We say that the conduct of the promoters with respect to this Caerphilly Rumney branch has been inconsistent with good faith, that they have attempted to evade statutory duties deliberately undertaken by them and to violate engagements with us of which they have derived and are now enjoying the benefits. As to the objection that the promoters have not the pecuniary means of making this line, they can apply towards this purpose the capital they seek to raise under the bill. No doubt, their statutory powers having expired, they cannot under this bill be compelled to make the line; but they are now asking Parliament to relieve them from the penalties to which they are liable for not making the line, and we may fairly urge upon the Committee that this company shall not be allowed to raise any money until they have renewed their statutory powers.

Bidder (for promoters): The time for making the line having expired, it cannot be made under any existing powers. The penalties remain, but from these the petitioners can derive no benefit, nor are they interested in the question of penalties. The sole point for consideration now is, whether this line has been abandoned under circumstances which will justify Parliament in remitting the penalties. If they are remitted, the Brecon company will be in no way prejudiced. The case would be different if this were a proposal to abandon a line which we had power to make, because this would be the repeal of existing powers. Our omission to make this line grew out of the petitioners' neglect to make a certain other line which alone rendered the construction of the Caerphilly Rumney junction important; yet though they have not fulfilled their part of the agreement, they insist that we shall be held to ours.

Coates: We have obtained power to abandon our line.

Bidder: The time for constructing the Caerphilly Rumney branch expired in 1871, and since then we have been liable to a penalty of £50 a day. We cannot make the line now without another Act.

Coates: It would be quite in accord with common practice to give the promoters power to raise £100,000 only upon condition that they should, in the next session of Parliament, apply for renewed powers to make this line.

Bidder: Upon that principle, the petitioners would be entitled to appear against any bill brought in by the Rhymney company. [*He was then stopped.*]

Locus standi Disallowed.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agents for Petitioners, Dyson & Co.

SHEFFIELD AND MIDLAND COMPANIES' COMMITTEE BILL.

Petition of the GREAT NORTHERN RAILWAY COMPANY.

12th March, 1873.—(*Before Mr. ADAIR, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.*)

Railway—Joint Committee—Representation—Corporation—Joint Owners—Partners—Share Petition, Alleged—Right of Constituent Member to be heard apart from Common Seal—Distinct Interest—Running Powers.

Three railway companies were joint owners of certain lines terminating at Helsby, and these lines were vested in a joint committee incorporated by statute and composed of representatives of each company. Two of these companies now promoted a bill which, *inter alia*, sought for running powers over the line of a fourth company from Helsby to Birkenhead. The joint committee petitioned against the bill, and it was objected that the third company, who also petitioned, could not be heard apart from the common seal. The latter company, however, maintained that the petition of the joint committee was illusory, and that the two companies were really playing the inconsistent part both of promoters and opponents:

Held, that this was a case in which, *prima facie*, two members of a corporation were seeking powers for their own advantage to the exclusion of the third member, who thus had

a separate interest, and might properly be heard apart from the common seal.

The *locus standi* of the petitioners was objected to, because (1) their lands, &c., will not be taken, and the petition does not allege a case of competition; (2) the railway property and works mentioned in the petition as belonging to the petitioners jointly with the Midland and Sheffield railway companies do, in fact, belong to and were, by the Cheshire Lines Act, 1867, absolutely vested in the Cheshire lines committee, who were incorporated by the Act and who have petitioned against the bill, and the petitioners have no interest in the said railway property and works separate and apart from the Cheshire lines committee; (3) the petition discloses no grievance entitling the petitioners to be heard consistently with practice.

Pember (for petitioners): The Sheffield and Midland railway companies are joint owners of the Manchester and Stockport railway, and the Act of 1869, which vested this undertaking in them, incorporated a committee with a common seal to manage the undertaking. This committee must not be confounded with the Cheshire lines committee, consisting of the Midland, the Sheffield, and the Great Northern companies, who own in Cheshire certain lines of railway terminating at Helsby. The bill is promoted by the Midland and Sheffield companies' committee, and will give the two companies, not only as constituents of this committee, but independently, powers to run over the London and North Western line from Helsby to Birkenhead, and to construct railways from Helsby to Runcorn on the Mersey. The Manchester and Stockport line, which the Sheffield and Midland companies jointly own, does not come anywhere near to Helsby, and neither company are at Helsby in any other capacity whatever than as constituents of the Cheshire lines committee. Here, then, are three co-proprietors of the Cheshire lines, and two of them, behind the back of the third partner, ask for running powers over a railway belonging to a fourth company from the point at which the joint undertaking ends.

Mr. RICKARDS: Do the Cheshire lines committee petition against the bill?

Saunders (for promoters): Yes; and there is no objection to their *locus standi*.

Pember: It is a sham petition lodged in order to hoodwink Parliament and prevent the Great Northern from being heard to ask that those running powers, if given to the two other companies, should be given to the Great Northern also. The petition of the Cheshire lines committee does not touch these running powers at all; it is confined to the question of physical junction. Now, the Midland and the Sheffield companies cannot be *bona fide* promoters, and at the same time represent us as opponents also. It is settled practice that shareholders who can show a distinct or antagonistic interest can be heard against the common seal. (*South Eastern, &c., Railway Bill*, 1 Cliff. & Steph. 169; *Caledonian Railway Bill*, 1b. 168, & 2 Cliff. & Steph. 257.) The powers sought under the bill by two of the

partners in the Cheshire lines are intimately and necessarily connected with the joint undertaking, and ought not to be granted in exclusion of the third partner and to his prejudice.

Saunders (in reply): As joint-owners of the Cheshire lines the petitioners have no distinct interest. The Cheshire lines committee have presented a petition in which they very properly deal only with points actually affecting the interests of the undertaking, *i.e.*, physical contact, for no other proposal in the bill relates to this corporation, nor can the Great Northern company be affected in any other way than as constituents of this corporation. The petitioners cannot therefore be heard against the common seal unless they show a separate interest, which has not been shown here. (*London, Chatham, and Dover Bill*, 1865, 8meth. 185; *Glasgow and Kilmarnock Joint Lines, &c., Bill*, 2 Cliff. & Steph. 259.) As to the running powers sought in the bill from Helsby to Birkenhead, the Great Northern would have no right to be heard against the bill on this ground, if even they already possessed running powers over this line; *a fortiori* they cannot be heard when they are only saying that they ought to have these powers. The bill cannot in the slightest degree affect the traffic on the line. The only grievance the petitioners have is that the bill does not give them something which they think they ought to have, but the mere fact that petitioners do not obtain from a bill some advantage which they want does not confer on them a right to a *locus standi*. If the Great Northern had chosen to come in with us as joint partners in promoting the bill, they might have had the same powers.

Locus standi Allowed.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agents for Petitioners, Dyson & Co.

SOUTH EASTERN RAILWAY BILL.

Petition of (1) OWNERS OF PROPERTY, RATEPAYERS, and INHABITANTS OF GREENWICH; (2) the VESTRY OF GREENWICH.

10th March, 1873.—(Before Mr. ADAIR, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Extension of Time Bill—Delay in Making Line—Owners, Ratepayers, Inhabitants—Representation—Vestry—District Board—Metropolitan Board of Works—Petitioners representing Railway Travellers and Public—Breach of Faith—Contract, alleged, by Company to make Railway—Statutory Obligations.

In 1865, the South Eastern railway company obtained an Act authorising them to make a line from Greenwich to Woolwich. Since then,

notwithstanding the complaints of the inhabitants, more than one extension of time Act had been procured by the company, who now sought a further extension of their compulsory powers to 1876. Against this bill separate petitions were presented by the vestry of Greenwich, and by the vicar and 650 owners, ratepayers, and inhabitants, urging a breach of faith on the part of the railway company, and injury to the trade of Greenwich through further delay in making the line. The Metropolitan board petitioned, their *locus standi* not being disputed, and it was objected that both sets of petitioners were represented by them:

Held, that as the petitioning owners, &c., did not allege that any right or property of theirs was affected, their object being merely to enjoy the advantage which would arise from the construction of the line, their opposition to the bill was, in effect, an opposition on the part of the general public; and the *locus standi* of both sets of petitioners was disallowed.

The *locus standi* of owners, &c., was objected to, because (1) no property of theirs is taken; (2) their objection to the proposed extension of time for the construction of a portion of the authorised railway in Greenwich cannot be taken by individual owners, ratepayers, or inhabitants, but only by the Metropolitan board of works, as having the local management of the metropolis (and Greenwich is within their jurisdiction and authority), and they have petitioned against these powers in the bill; (3) even if the governing body of Greenwich were entitled to be heard against the bill, instead of, or along with the Metropolitan board, then the Board of Works for Greenwich district, who are the governing body, and not the petitioners as individual owners, ratepayers, and inhabitants, are the proper persons to petition; (4) the petitioners urge no ground of objection which entitles them to be heard consistently with rules and practice.

The *locus standi* of the vestry was objected to on substantially the same grounds, and it was contended that if the objections to the bill were such as could be taken by, or on behalf of, the parish, they could only be taken by the governing body, who are the Board of Works for the Greenwich district, but this district board (who are represented on the Metropolitan board) would not be entitled to be heard, the Metropolitan board having petitioned.

Pembroke Stephens (for both sets of petitioners): The petition of owners, &c., is signed by the vicar and 650 other persons, and the number of signatures might have been increased indefinitely. We object to clause 12 of the bill extending the time for completing an authorised railway

between Greenwich and Woolwich. The company have made repeated promises which have not been fulfilled; at last the patience of the petitioners has given way; and in the interests of the locality they feel it necessary to raise this broad issue and ask Parliament to require the company to carry out their own proposals. Before 1865 there were various independent schemes for a railway between Greenwich and Woolwich, but the company succeeded in defeating them. In 1865 they obtained an Act for making such a line. In 1867 they obtained an extension of time, and in 1871 a further extension was granted by Parliament. After thus evading their obligations for eight years, the railway company now ask for three years' additional grace. We submit that an Act of Parliament is in the nature of a contract between the company obtaining the Act and the public, and that Parliament will not allow the obligations imposed by the Act to be thus systematically evaded by the contracting parties, with a view, as we contend, to occupy the ground and prevent the inhabitants from obtaining the advantages of other railway systems. The trade of the town has already been injuriously affected by the *laches* of the company. As to the objection that we are represented by the Metropolitan board, it is disposed of by the *South London Gas Bill* (2 Cliff. & Steph. 218), where both the Metropolitan board and the local authorities were heard. The Greenwich board of works do not petition; we do; and it is not for the promoters to say by whom they will choose to be opposed. (*Pontypool Gas and Water Bill*, ante, p. 51.) The Metropolitan board petition here and their *locus standi* is admitted, but they have nothing to do with the particular grievance of the petitioners; they do not travel by the railway.

The CHAIRMAN: You contend that the Metropolitan board might have a case against the construction of the line, but that the inhabitants use the line and therefore have a different interest?

Stephens: Yes; the objections of the vestry are to the same effect as those of the owners and occupiers. The vestry of Greenwich elect to the District board, who do not petition; and the District board elect to the Metropolitan board.

Rodwell, Q.C. (for promoters): Both sets of petitioners come here in the public interest, and to represent a public grievance. They are not landowners; they are not shareholders; they merely wish to complain of the postponement of what incidentally would be an advantage to them. They say there has been a breach of faith, and an evasion of statutory obligations. The breach of faith, if committed at all, will be committed with Parliament, not with them, and it is to Parliament we are appealing. Again, the statutory obligation is not one which the petitioners can enforce in the Court of Queen's Bench or elsewhere, and we are asking Parliament to relieve us from the obligation. The petitioners were no parties to this contract as they call it. The railway company voluntarily applied for powers to make the line, and if the petitioners are disappointed by the delay in making it, that gives them no right to oppose the postponement. Even where landowners have

The *locus standi* of the petitioners was objected to, because (1) the bill is a bill to confirm a provisional certificate made by the Board of Trade under the Railways Construction Facilities Act, 1864, and the Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870; and the petitioners not being a railway or canal company are not entitled to be heard against a bill to confirm such a certificate; (2) no lands or property belonging to the petitioners are sought to be taken or used; (3) and (4) the petitioners do not represent the class of traders and manufacturers at Widnes and Ditton, and even if they did are not entitled to be heard against the bill according to practice.

Webster (for petitioners): Under section 6 of the Act of 1864, when the promoters have contracted for the purchase of the lands required for the railway, they may apply to the Board of Trade for a certificate. Section 8 says "The Board of Trade, before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly enquire into the merit of any objections brought before them respecting the application." If, however, any objection is made by a railway or canal company, the Board of Trade can proceed no further; there must be an enquiry in the usual way before a Select Committee. Such intervention occurred here, and the bill is referred to a Select Committee. It is contended on the other side that as we are not a railway or canal company, we cannot appear before the Committee, but ought to have urged our objections to the bill before the Board of Trade. But as the certificate of the board has no operation whatever till it is confirmed by Parliament, surely the Board of Trade is *functus officio*, and any persons who wish to object to the bill have a right to be heard just as if the application were for an Act in the ordinary course. The point has been decided. (*Widnes Railway Provisional Certificate Confirmation*, 2 Cliff. & Steph. 295.)

Lloyd, Q.C. (for promoters): There the petitioners were a railway company. Here the petitioners entered an appearance before the Board of Trade, and might have been fully heard, but chose not to proceed with their opposition.

Webster: As the London and North Western company opposed the Provisional Order before the Board of Trade, a bill became necessary, and this being so, the petitioners thought they might as well save the expense of appearing before the Board of Trade. Section 4 of the Amending Act of 1870, after providing for the introduction of a bill to confirm the provisional certificate, says, "If, while any such bill is pending in either House of Parliament, a petition is presented against any provisional certificate comprised therein, the bill, so far as it relates to the certificate petitioned against, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act."

The CHAIRMAN: You say that section 4 of the Act of 1870 enlarges the powers of the Act of 1864?

Webster: I should have argued that we had a *locus standi* even under the Act of 1864, but there can be no question of our *locus standi* under the

Act of 1870. The jurisdiction of this Court is precisely the same over Provisional Orders as over private bills (S. O. 98); and the same principles are applicable in both cases. (*North London Tramways Bill*, 2 Cliff. & Steph. 82.) The bill comes before you under this order of the House of Commons:—"Ordered that this bill be committed to a Select Committee to be appointed in the same manner as in the case of a railway or canal bill. That, subject to the rules, orders, or proceedings of this House, all petitions presented against the bill be referred to the same Committee."

Lloyd (in reply): The question here is, not whether petitioners, under these circumstances, are to be shut out from being heard, but whether the Legislature did not intend that all the opponents of the railway should be heard before the Board of Trade, except a railway or canal company. There has been no decision upon this point. In the case of last year, the question was one of competition; it did not determine that other petitioners than railway companies have a right to be heard against the confirmation of a Provisional Order. The *Tramways* case arose under a separate Act, containing no provisions as to a Board of Trade inquiry. The Act of 1864 was passed in order to afford a cheap means of constructing railways, an object which the Act has not succeeded in securing. The machinery was this—if the railway company obtained the consent of all the landowners, deposited at the Board of Trade the usual plans and sections, and gave certain notices, the Board of Trade could hear any objectors other than a railway or canal company, and after enquiry gave a draft certificate which became absolute, unless, within a certain period, the House passed a resolution to proceed no further upon it. In all essentials the state of things remains precisely the same now. If no railway company had come in here, the petitioners must have gone to the Board of Trade, and must have been bound by the decision of the Board. Under the Act of 1864, if a railway or canal company intervened, the jurisdiction of the Board of Trade ceased as to all parties. The Act of 1870 restored this jurisdiction, except in the case of railway and canal companies; and I submit that the general words, "a petition," in section 4, refer to the particular case of these companies; they mean a petition from the people who have the right to petition. From any other construction it would follow that petitioners, not being railway or canal companies, have the right of going before two tribunals, the Board of Trade and the Select Committee, and may treat the decision of the Board of Trade as in no way binding upon them, though the promoters would be bound by it. The intention of the Act of 1870 was, that a railway or canal company alone should be relegated to Parliament, leaving all other parties to be heard by the Board of Trade.

Mr. BRISTOWE: You contend that where parties, having the right of applying to the Board of Trade under section 6 of the Act of 1864, do not avail themselves of this right, they cannot come to Parliament unless the general words of section 4 of the Act of 1870 confer such a right?

out good cause, and the *onus* is upon the promoters to show why it should be limited. In the preamble there is a recital that the promoters "have been and are unable from want of funds to complete their undertaking." Surely we are entitled to show the pecuniary position of the company who are thus proposing to acquire rights over our property, and we should not be tied down to mere engineering questions.

Mr. BRISTOWE: The petition makes no allegation as to the financial position of the promoters.

Stephens: Not in specific terms; but there being a recital of the fact in the preamble, it is a question upon which we should cross-examine before the Committee.

Rodwell (in reply): We concede the *locus standi* of the petitioners against the junction and the running powers, but as to the deviation line, we only say that their right, "if any," should be limited to it and the two other points. It does not matter to the petitioners if we are bankrupts, or if, as they allege, the gradients upon our line are bad, and a shorter line might be constructed with better gradients. If the gradients at the junction will be bad, they will be able to give evidence upon that point.

[The engineers explained that, by arrangement, the Waterford and Central Ireland run over a portion of line belonging to the Waterford and Limerick, and the promoters sought powers to make a junction with this portion and run over it into the Waterford station of the petitioners, this station being also used by the Central Ireland company.]

Rodwell: Under the limited *locus standi* we concede to them, the petitioners may show that the line and station are so crowded with traffic that we ought not to go there, but they have no right to go into the general questions raised in the petition.

CHAIRMAN: The *locus standi* of the Petitioners is Allowed against the deviation line No. 1, and against Clauses 34 to 38 inclusive (running powers and use of station), and so much of the preamble as relates thereto.

Agents for Bill, *Marriott & Co.*

Agents for Petitioners, *Martin & Leslie.*

WIDNES RAILWAYS (RAILWAY PROVISIONAL CERTIFICATE) BILL.

Petition of OWNERS or LESSEES of MANUFACTORIES or WORKS, AND TRADERS in WIDNES AND DITTON.

28th April, 1873.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Railway—Board of Trade—Railway Construction Facilities Act, 1864, and Amendment Act, 1870—Provisional Certificate, Bill to Confirm—Opposition to, by Railway Company—Traders and Manufacturers—Traffic, apprehended injury to, through want of Junctions—Tolls, limit of, in Railway Bill—Jurisdiction of Court as to Provisional Certificates—Railway and Canal

Companies—Petitions by, under Railway Construction Facilities Acts—Other Petitioners—Double Tribunal—S. O. 98.

Against a bill to confirm a provisional certificate made by the Board of Trade for the construction of a railway, certain traders and manufacturers petitioned, alleging the necessity of junctions between the proposed railway and existing lines, and also asking for a reduction in the tolls to be levied under the bill. It appeared that the petitioners had entered an appearance before the Board of Trade, but had not proceeded with their opposition, reserving it for the Select Committee when, upon the intervention of an opposing railway company, a Parliamentary enquiry became necessary. The promoters contended that, under the Railway Construction Facilities Acts of 1864 and 1870, the petitioners, not being a railway or canal company, had no right to oppose the bill in Parliament, and could only appear before the Board of Trade against the provisional certificate; and that, as they had not so appeared, they were barred now from opposing at all:

Held, that under section 4, in the Act of 1870, the right of petitioning Parliament against bills confirming provisional certificates is not limited to railway and canal companies, but extends to all classes of petitioners.

Seem, therefore, that petitioners other than railway and canal companies may elect in such cases whether they will oppose before the Board of Trade or in Parliament, or may appeal to Parliament against an adverse decision by the Board of Trade.

The petitioners alleged that the district in which they carried on business was intersected by railways belonging to the London and North Western railway company; that such railways approached very closely, but did not join, the railways proposed by the certificate, and that the occupation of the ground by the proposed railways might have the effect of preventing such junctions. They urged that these junctions would be greatly to the benefit of traders in Widnes, and that if the proposed railways were sanctioned, the company should be "compelled to form a connection with the London and North Western railway." Further, the petitioners asked to be heard upon various matters, and particularly as to the proposed rates on salt, which is used very largely in the district in making alkali, and they asked that the tolls specified in the schedule should be limited.

The *locus standi* of the petitioners was objected to, because (1) the bill is a bill to confirm a provisional certificate made by the Board of Trade under the Railways Construction Facilities Act, 1864, and the Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870; and the petitioners not being a railway or canal company are not entitled to be heard against a bill to confirm such a certificate; (2) no lands or property belonging to the petitioners are sought to be taken or used; (3 and 4) the petitioners do not represent the class of traders and manufacturers at Widnes and Ditton, and even if they did are not entitled to be heard against the bill according to practice.

Webster (for petitioners): Under section 6 of the Act of 1864, when the promoters have contracted for the purchase of the lands required for the railway, they may apply to the Board of Trade for a certificate. Section 8 says "The Board of Trade, before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly enquire into the merit of any objections brought before them respecting the application." If, however, any objection is made by a railway or canal company, the Board of Trade can proceed no further; there must be an enquiry in the usual way before a Select Committee. Such intervention occurred here, and the bill is referred to a Select Committee. It is contended on the other side that as we are not a railway or canal company, we cannot appear before the Committee, but ought to have urged our objections to the bill before the Board of Trade. But as the certificate of the board has no operation whatever till it is confirmed by Parliament, surely the Board of Trade is *functus officio*, and any persons who wish to object to the bill have a right to be heard just as if the application were for an Act in the ordinary course. The point has been decided. (*Widnes Railway Provisional Certificate Confirmation*, 2 Cliff. & Steph. 295.)

Lloyd, Q.C. (for promoters): There the petitioners were a railway company. Here the petitioners entered an appearance before the Board of Trade, and might have been fully heard, but chose not to proceed with their opposition.

Webster: As the London and North Western company opposed the Provisional Order before the Board of Trade, a bill became necessary, and this being so, the petitioners thought they might as well save the expense of appearing before the Board of Trade. Section 4 of the Amending Act of 1870, after providing for the introduction of a bill to confirm the provisional certificate, says, "If, while any such bill is pending in either House of Parliament, a petition is presented against any provisional certificate comprised therein, the bill, so far as it relates to the certificate petitioned against, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act."

The CHAIRMAN: You say that section 4 of the Act of 1870 enlarges the powers of the Act of 1864?

Webster: I should have argued that we had a *locus standi* even under the Act of 1864, but there can be no question of our *locus standi* under the

Act of 1870. The jurisdiction of this Court is precisely the same over Provisional Orders as over private bills (S. O. 98); and the same principles are applicable in both cases. (*North London Tramways Bill*, 2 Cliff. & Steph. 82.) The bill comes before you under this order of the House of Commons:—"Ordered that this bill be committed to a Select Committee to be appointed in the same manner as in the case of a railway or canal bill. That, subject to the rules, orders, or proceedings of this House, all petitions presented against the bill be referred to the same Committee."

Lloyd (in reply): The question here is, not whether petitioners, under these circumstances, are to be shut out from being heard, but whether the Legislature did not intend that all the opponents of the railway should be heard before the Board of Trade, except a railway or canal company. There has been no decision upon this point. In the case of last year, the question was one of competition; it did not determine that other petitioners than railway companies have a right to be heard against the confirmation of a Provisional Order. The *Tramways* case arose under a separate Act, containing no provisions as to a Board of Trade inquiry. The Act of 1864 was passed in order to afford a cheap means of constructing railways, an object which the Act has not succeeded in securing. The machinery was this—if the railway company obtained the consent of all the landowners, deposited at the Board of Trade the usual plans and sections, and gave certain notices, the Board of Trade could hear any objectors other than a railway or canal company, and after enquiry gave a draft certificate which became absolute, unless, within a certain period, the House passed a resolution to proceed no further upon it. In all essentials the state of things remains precisely the same now. If no railway company had come in here, the petitioners must have gone to the Board of Trade, and must have been bound by the decision of the Board. Under the Act of 1864, if a railway or canal company intervened, the jurisdiction of the Board of Trade ceased as to all parties. The Act of 1870 restored this jurisdiction, except in the case of railway and canal companies; and I submit that the general words, "a petition," in section 4, refer to the particular case of these companies; they mean a petition from the people who have the right to petition. From any other construction it would follow that petitioners, not being railway or canal companies, have the right of going before two tribunals, the Board of Trade and the Select Committee, and may treat the decision of the Board of Trade as in no way binding upon them, though the promoters would be bound by it. The intention of the Act of 1870 was, that a railway or canal company alone should be relegated to Parliament, leaving all other parties to be heard by the Board of Trade.

Mr. BRISTOWE: You contend that where parties, having the right of applying to the Board of Trade under section 6 of the Act of 1864, do not avail themselves of this right, they cannot come to Parliament unless the general words of section 4 of the Act of 1870 confer such a right?

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1874.

* * * Where a Standing Order is quoted in the Reports, the numbering is that of the Standing Orders for the Session 1876.

BELFAST WATER BILL.

Petition of OWNERS AND OCCUPIERS.

11th May, 1874.—(Before Mr. WYNN, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Water Bill—Water Commissioners—Qualification of Electors—New Capital—Borrowing Powers—New Rating Powers, absence of—Ratepayers—Representation—Existing Legislation, complained of—Disfranchisement of Partners—Distinct Interest—Allegations insufficient.

By an alleged oversight in an Act incorporating a body of water commissioners in Belfast, all ratepayers carrying on business in partnership were disqualified from voting in the election of the commissioners. Against a bill promoted by the commissioners for the construction of new works and the raising of money, a petition was now presented by 61 ratepayers, most of whom were thus disqualified, praying that no fresh powers should be granted to the commissioners unless accompanied by the removal of this disqualification. It was objected by the promoters (1) that the petitioners did not represent the ratepayers, who were over 5,000 in number; (2) that, as the bill did not alter the rates, the petitioners could not be heard to complain of existing legislation; and further, *arguendo*, (3) that the petition did not in terms allege a distinct interest:

Held (apparently upon the second ground of objection), that the petitioners had no *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) the individuals and firms signing the petition do not, in fact, represent the ratepayers and owners and occupiers of property in Belfast, the population of Belfast being about 200,000, the number of owners or occupiers of property liable to the payment of water-rates exceeding 25,000, and the number of ratepayers qualified to vote at the election of water commissioners being 5,547, while the petitioners are only 61 in number. Many of the petitioners reside outside the borough and are occupiers only of business premises in Belfast, and so only pay the fire water-rate, which is one-fourth of the domestic water-rate; (2) the liabilities of the ratepayers as to payment of water-rates are not altered by the bill; (3) no public meeting of ratepayers has been held for the purpose of opposing the bill or authorising a petition against it.

Cripps, Q.C. (for petitioners): The bill will authorise the commissioners to borrow an additional sum of £120,000, which is, in fact, a new burden imposed on the ratepayers, including the petitioners. Clause 4 provides that the Commissioners' Acts of 1840 and 1865 shall be read and construed as one with this Act. The special grievance of which we complain is, that under the Act of 1865, which is to be read as if it were now being re-enacted, an elector, to be qualified to vote for a commissioner, must be assessed in respect of "some one house or building." It has been held that, under this clause, each elector must be in the exclusive occupancy of one house, the result being the disfranchisement of all persons carrying on business in partnership, &c.

Mr. RICKARDS: This qualification clause is part of a former Act?

Cripps: Yes; but the commissioners now come with a bill seeking new powers.

Pope, Q.C. (for promoters): No new powers of rating.

Cripps: We are now to be rated in respect of a very much larger sum of borrowed money, and our grievance will therefore be so much the greater.

Mr. RICKARDS: This is, in part, a money bill, and you want to take advantage of it to object to the constitution of the trust?

Cripps: That is so; but the £120,000 now to be raised will be a fresh charge upon the water-rates; and we, as water ratepayers, ask to have a voice in the election of the persons by whom this money will be spent. The greater number of the petitioners, as members of firms in Belfast, are excluded under the existing qualification.

Pope: There is no such statement in the petition. The petitioners say they are rated, but not that they are disqualified from voting.

Cripps: They expressly urge that no further powers should be conferred upon the commissioners, unless accompanied by the removal of the disqualification, "now attaching to any of your petitioners or other persons by reason of their being members of a firm of partnership." It must have been through oversight that so large and influential a body of persons as the members of firms in Belfast were deprived of their ordinary common law right of electing those who tax them.

Pope (in reply): Practically, what the Court are asked to do is to allow petitioning ratepayers to appear against a bill which does not in the slightest degree alter their status, or give any fresh powers with regard to them, and to appear against it, not on the ground that the bill will injure them, but because it does not do something they think it ought to do. In order to provide an additional supply of water, the bill authorises the construction of new works and the raising of additional funds. There is no other change in the power of the commissioners. The petitioners do not say that they have not votes, or that their interests differ from those of the ratepayers generally; they describe themselves as if they were qualified electors. If they are allowed a *locus standi*, every disqualified ratepayer may be heard against a water bill promoted by the body which represents them, and proposing merely to raise money. Such a rule of practice is unheard of.

Locus standi Disallowed.

Agents for Bill, *Martin & Leslie.*

Agents for Petitioners, *Dyson & Co.*

CHESHIRE LINES COMMITTEE BILL.

Petition of J. W. Fox.

April 22nd, 1874.—(Before Sir J. St. AUBYN, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.

Railway—Level Crossing—Landowner—Property injuriously affected—Road—Easement—Public Footpath—Interference with—Ratepayer—Local Board—Road authority—Representation.

A ratepayer petitioned against a railway bill authorising a level crossing upon a road leading to land of his, on which manufactories were in course of building. The road was situated within the borough of Stockport, and the corporation, as the local board of Stockport, petitioned against the bill in respect of the same level crossing, their *locus standi* not being objected to. The petitioner urged that his interests, and those of his tenants, were so seriously affected that he would not be adequately represented by the local board or by any other body:

Held, that, for purposes of *locus standi*, he had no ground of complaint except in common with the rest of the public using the road, and that as a ratepayer of Stockport, he was represented by the local board.

The *locus standi* of the petitioner was objected to, because (1) no property of his will be taken or interfered with under the bill; (2) the road mentioned by the petitioner does not belong to him; he is interested in it, if at all, only as one of the public using the road, and, therefore, has no right to be heard as to any alleged interference with it; (3) the corporation of Stockport have petitioned against the bill with reference to the road as representing the inhabitants of the district, and the petitioner is sufficiently and properly represented by the corporation; (4) the petitioner is not entitled to be heard according to practice.

Riddle (for petitioner): By the bill it is proposed to cross on a level an occupation road giving access to valuable lands belonging to Mr. Fox, on which manufactories are in course of building. The road is used by Mr. Fox's tenants, as well as by the public, and a level crossing over it will be dangerous, besides causing much inconvenience and loss to the petitioner and his tenants. We say that either a substituted road should be provided by the promoters, or the proposed railway, if authorised, should be carried over the road by a bridge or under it by a tunnel. At the point of crossing, this road is now a public road, but the continuation of it leading into Mr. Fox's land is still a private road.

Mr. RICKARDS: Who is liable to repair the road at the point of crossing?

Hoskins, Parliamentary Agent (for promoters): The corporation of Stockport in their petition say they are the local board; that the public roads are under their management; and that they represent the interests of the inhabitants.

Riddle: Mr. Fox objects to leave the protection of his interests in this road to the corporation or any other body. This is the only road which gives access to the petitioner's land on one side.

Hoskins (in reply): The petitioner does not say that we interfere with his lands; the road,

in fact, is not on his land at all. If it be a private road, Mr Fox only has an easement in respect of it, and a mere easement does not give a *locus standi*. (*Hindley Local Board Bill*, 2 Cliff. & Steph. 230.) The petitioner does not even allege that there is a right of way along this road.

Riddle: There is a public footpath, but no public right of way for carts.

Hoskins: If it had been merely an occupation road we should have had no occasion to put it into the level crossing clause. As a public road, the corporation of Stockport, who are the local board, sufficiently protect Mr. Fox. The whole road is within the borough of Stockport, and there is nothing in the petition showing that it is not a road used by the public.

Locus standi Disallowed.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agents for Petitioner, Milne, Riddle & Mellor.

EDINBURGH AND DISTRICT WATER BILL.

Petition of (1) MIDLOTHIAN WATER COMPANY AND R. B. W. RAMSAY.

8th May, 1874.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Water Bill—Landowner—Interference with Property by Pipes—Water Company—Joint Petition with—Landowner's locus upon—Distinction between Petitioners—Invasion of Water Company's District—Competition—Incorporation—Common Seal—Petition, alleged invalidity of—Company, whether legally constituted—Court will not try question—Statutory Meeting—Companies' Clauses (Scotland) Act.

A landowner, whose property would be traversed by the line of pipes of a water company, joined with a competing water company in petitioning against the bill. It was objected that he should only be heard upon such of his allegations as related to actual interference with his land. The Court, however, allowed his *locus standi* upon the joint petition without limitation.

The water company complained of invasion of district and competition. The promoters replied that the petitioning company were incapable of petitioning Parliament, no legal meeting having been held within the statutory period of six months after incorporation. The common seal of the company was, however, appended to the petition:

Held, that the Court could not try the question whether a company petitioning under their common seal, and duly incorporated by Parliament, were or were not legally constituted, and a limited *locus standi* was allowed to the company upon the joint petition.

The *locus standi* of the Midlothian water company and R. B. W. Ramsay was objected to, because (1) the company is not one capable of petitioning Parliament, or of using a common seal for that purpose, because no legal meeting was held in February last, as was required under the company's Act, the necessary quorum of shareholders not having been present, and because no meeting has been legally called to authorise the sealing and presentation of the petition; (2) the company have no right or interest affecting the supply of water to the district of the Edinburgh and district water trustees (the promoters) excepting under agreement; (3) the company are only entitled to be heard against the proposed extension by the bill of the area of supply defined by the Edinburgh and District Waterworks Act, 1869, within the area supplied by the Midlothian company; (4) the bill promoted by the Midlothian company for supplying water to Leith is not really a competing bill, as, under their Act of 1873, the company can only supply Leith by agreement with the Edinburgh and district water trustees; (5) the conditional proposal to take a supply of water in bulk from the Midlothian company took place without prejudice, and they ought not to be allowed to be heard thereon; (6) the allegation of R. B. W. Ramsay that the line of pipes will pass through his estate, is not an allegation entitling him to a hearing, and at least he should only be heard against the passage of such pipes through his land; (7) he is not entitled to be heard against the proposed Denscleugh reservoir, as the bill secures to him and other owners of lands, mills, and works, the compensation provided in the Edinburgh Water Company's Act, 1856.

Granville Somerset, Q.C. (for petitioners): Mr. Ramsay in his petition says the line of pipes will pass for about a mile and a-half through his lands.

Clerk, Q.C. (for promoters): We admit that Mr. Ramsay is a landowner with whose land we interfere, but we object to his being heard upon matters mentioned in his petition relating to the Midlothian company, and with which he has no possible concern.

Mr. RICKARDS: This is a double petition, but we are bound to give a general *locus standi* to Mr. Ramsay just as though he had petitioned separately: for *locus standi* purposes we must treat the petition as though Mr. Ramsay were petitioning alone, in which case he might find any faults he pleased with the bill, and as a landowner he would be heard upon the allegations in his petition.

Locus standi Allowed.

Somerset: As to the Midlothian water company, the bill (clause 29) empowers the trustees to supply water in bulk to any railway or other persons, even (as we allege) within our district; while we were empowered by our Act of last year to supply water in bulk or otherwise to these very trustees and to any public body or company, either within or beyond our limits of supply, provided we do not enter the district of the promoters except by agreement with them. The proposed supply of water by the promoters in five parishes will directly compete with us; our Act obliges us to supply those places, so that there will be two companies empowered to supply the same places; and as to Leith, the bill is in competition with a pending bill promoted by us. As to the preliminary objection, the petition bears the common seal according to the practice of Parliament.

Mr. RICKARDS: Are we to try the question whether this is a legally constituted company or not?

Clerk (for promoters): There is no company.

Mr. RICKARDS: The Act constitutes a company; the company is incorporated by the Act.

Clerk: The company was incorporated by the Act of last year, and by section 40 the first ordinary meeting is to be held within six months. The Companies' Clauses (Scotland) Act prescribes that a properly constituted meeting is to be held. We say that no such meeting ever was held.

Somerset: I deny that.

Mr. RICKARDS: The objection is, that it is not a company.

Clerk: I cannot deny that the petition is sealed with the company's seal. Whether there is such a company or not, and what force there may be in the allegations of the petitioners, will be matter for discussion elsewhere.

Locus standi Allowed against clauses 24 [extension of limits] and 29 [power to supply in bulk by agreement], and so much of the preamble as relates thereto.

Agents for Petitioners, *Martin & Leslie*.

Petition of (2) RATEPAYERS WITHIN THE LIMITS OF
COMPULSORY SUPPLY OF THE EDINBURGH AND
DISTRICT WATER TRUST.

Water Trust—Costs Clause—Authority to pay costs incurred in former Session—Lis pendens—Injunction—Court of Session—Legislation pending appeal to House of Lords—Municipal Corporation—Ratepayers—Common Seal—Estoppel by representation, doctrine of—Water Trustees Nominated by Corporation—Ratepayers not represented by nominated body—Or by Trustees and Corporation jointly—Joint promoters.

In 1871, a bill promoted by the water trustees of Edinburgh, and containing the usual costs clause, passed the House of Commons, but was thrown out in the House of Lords on the opposition of ratepayers. The trustees attempted to pay the costs out of the water-rates, but were prevented by an injunction. They now, in a bill for increasing the water supply of Edinburgh, proposed to pay, out of rates leviable under the bill, a stated sum towards the costs incurred not only in promoting but in opposing the bill of 1871. Against this compromise a petition was presented by 2,900 out of 40,000 ratepayers within the water district, who urged that the trustees were asking Parliament to determine a question still in litigation, an appeal to the House of Lords from the injunction granted by the Court of Session being still pending. It was objected that the petitioning ratepayers were represented by the water trustees, and could not therefore be heard against the common seal:

Held, that as the water trustees were nominated by three municipal corporations within the area of supply, and as the ratepayers therefore were not directly represented in the water trust, the ordinary doctrine of representation did not apply, even though the corporation of Edinburgh were joint promoters of the bill, and of the two remaining corporations one had petitioned in its favour and the other had prepared a petition to the same effect.

This was a bill "to provide an additional supply of water for the city of Edinburgh and the town and port of Leith, and town of Portobello, and districts and places adjacent, from Moorfoot, including the river South Esk and Tweeddale Burn, and Portmore Loch, and by additional storage in Glencorse Valley." It was promoted jointly by the Edinburgh corporation and the Edinburgh and district water trustees, a body composed of nominees of the corporations of Edinburgh, Leith, and Portobello, the Lord Provosts of Edinburgh, Leith, and Portobello being *ex officio* members.

The *locus standi* of the petitioners was objected to, because (1) they are represented as ratepayers by the joint promoters of the bill; and (2) as owners and occupiers, no property of theirs will be taken or interfered with; (3) the petitioners describing themselves as members of an alleged finance committee and as acting on behalf of the ratepayers, owners, and occupiers, who successfully opposed the bill promoted by the water trustees in 1871, cannot be heard on behalf of persons who do not petition and who, if they did petition, would not be entitled to be

heard on the ground before stated; (4) the petitioners, Charles Cowan and Colin Mackenzie, cannot be heard as ratepayers or (5) as pursuers in certain proceedings for interdict respecting payment of the costs of the bill of 1871; (a) because they were the proceedings of individual ratepayers; (b) because the bill does not impugn the judgment of the Court of Session nor seek to have it declared that the water trustees are entitled to pay these costs under the Edinburgh and District Water Act, 1869, but on the contrary seeks power to pay the costs out of money to be raised on rates leviable under the bill, and this effort to relieve the embarrassment produced to the whole ratepayers and their trust by the individuals named is done in a fair exercise of a discretion which these individuals ought not to be allowed to endeavour to prevent; and because (c) the bill of 1871 passed the House of Commons with the usual clause authorising payment of the costs, which, it is submitted, is sufficient ground for refusing now to rehear the question.

Shiress Will (for ratepayers): The part of the bill to which we particularly object is the proviso in clause 57 to pay out of the water-rates £19,000 costs incurred in promoting the Edinburgh and District Water Bill, 1871, which passed the House of Commons, but was thrown out in the other House on the opposition of ratepayers. The bill recites that the water trustees incurred a large amount of costs in promoting the bill, believing that they were legally entitled so to do under their Act of incorporation, but that by interdict of the Court of Session they were prevented from paying these costs out of the trust fund. The bill further recites that the corporation of Edinburgh, impressed with the hardship thus caused to the individual trustees, who became responsible for the costs, have joined with the trustees in seeking for a remedy. It is therefore proposed (section 57) that the costs of the trustees, not exceeding £19,000, and interest thereon, should be paid out of the trust funds, together with (section 58) the unpaid portion of the costs of the opposition by the ratepayers, not exceeding £2,000. In other words the promoters seek to do what the Court of Session have decided they shall not do, having no legal power. An appeal has been lodged against this decision, and such appeal is still pending in the House of Lords. The bill, therefore, is an attempt to settle by legislation a matter still in litigation between the parties. Mr. Cowan and Mr. Mackenzie, who are among the petitioners, represented the ratepayers in the Court of Session, and we ask to be allowed to place the facts before the Committee. This bill is really promoted, and the costs are paid, by the Edinburgh town council, though no doubt the common seal of the water trust is affixed to it. The corporation cannot represent the water consumers beyond the municipal limits, which are not the same as those of the water trust; and some among the 2,900 petitioners are outside the municipality of Edinburgh. Then, as to the water trustees, the rule that constituents cannot be heard against the common seal is not a hard and fast rule, and in many cases the Court in its discretion has allowed dissentient

ratepayers to appear. The question always is whether the petitioners have a substantial grievance, and represent a substantial proportion of the ratepayers. If these ratepayers are not heard, a majority of the water trust will be able to do what the Court of Session says is unlawful. Suppose the trustees promoted, under the common seal, a bill giving to each of them £1,000, could it be fairly said that the minority in the trust, and ratepayers outside the trust, ought not to be heard?

Clerk, Q.C. (for promoters): The petitioning ratepayers are clearly represented by the water trustees, for the three corporations of Edinburgh, Leith, and Portobello nominate the members of the trust, and the ratepayers elect the corporations. Moreover, the corporation of Edinburgh are promoting the bill, along with the water trustees, while the corporation of Portobello have petitioned in its favour, and a similar petition is about to be presented by the corporation of Leith.

The CHAIRMAN: Your proposition is, that whereas the three corporations appoint certain trustees for certain purposes, it follows that the ratepayers who elect those three corporations have elected them to carry out this bill, and, therefore, their mouths are closed as ratepayers against the bill itself. We do not see that that is a necessary consequence of the rule that ratepayers cannot be heard against a bill promoted by the corporation which they have themselves elected.

Clerk: No doubt the mode of election here is not direct, but the trust is elected annually, and the petitioning ratepayers number less than 3,000 out of 40,000. If you say that they must be heard because the water trustees are not elected directly by the ratepayers, it would follow that any single ratepayer might be heard against a water trust bill, even though the whole constituency of 40,000 were in its favour. You cannot draw the line.

Mr. RICKARDS: When a corporation promotes a bill under its common seal, that has been held to be an estoppel to a petition by ratepayers against the bill; but the question is whether this doctrine of estoppel can be carried one step further, so as to prevent ratepayers from objecting to the decision of a body elected by the corporation.

Clerk: The doctrine may be reasonably so extended, because the corporation, who form the college of electors to the trust, are elected with the express understanding on the part of the ratepayers that they, the members of the corporation, will nominate the other body. The petitioners say that at the 1871 election, seventeen members of the water trust were changed, and replaced by acknowledged opponents of the scheme of 1871. This fact shows that the ratepayers generally have a direct influence in the election of the trustees, and return to the corporation men who will take a particular view.

Mr. RICKARDS: It shows that the influence of the ratepayers extends through the body they elect to the body elected by the corporation.

Clerk: The question is whether so small a minority as 3,000 out of 40,000 ratepayers can be heard in opposition to the expressed views of the majority?

Mr. RICKARDS: I think the question is not one depending on the number of petitioners; it is one of principle—whether ratepayers are to be bound by the act, not of those they elect, but of those elected by those whom they elect.

Clerk: In electing to the corporation, ratepayers entrust its members not only with a general, but an express authority to elect to the water trust, and that being so, they are as much bound by the results of the election of certain trustees as they are by the election of the corporation itself. The petitioners say we are seeking to prejudice a question now in litigation, but the object of clause 57 is to get rid of a most painful difficulty and source of embarrassment occasioned by the decision of the Court of Session, and it meets with the general concurrence of the ratepayers.

Locus standi Allowed against Clauses 57-8 (the costs clauses), and so much of the preamble as related thereto.

Agent for Petitioners, Robertson.

Petitions of (3) CALEDONIAN RAILWAY COMPANY; and (4) OF EDINBURGH AND LEITH WINE, SPIRIT, AND BEER ASSOCIATION.

Water Supply—Water Trustees—Railway Company as Water Ratepayers—Trade Association—Large Consumers—Previous Legislation Protecting—Domestic Water Rate—Substitution of Unlimited for Limited Rate—Public Water-rate—Repeal of Statutory Securities, alleged—Status, change of, by Bill—Clauses, difficulty in interpreting—Supply of Water, by Agreement—Owners and Occupiers—Traders—Ratepayers—Municipal Corporation—Representation—Undertaking by Promoters to secure Petitioners' rights, a ground of Locus Standi.

It appeared that a water bill would or might by some of its provisions change the conditions of supply to a railway company, and to the members of a trade association, all of whom were large consumers, and as such were protected by previous legislation. The clauses which, according to the petitioners, would have this effect, were difficult of interpretation; and, as to one of them, the promoters undertook to secure the rights of the petitioners:

Held, that the railway company, and the trade association had a *locus standi* limited to clauses which might injuriously affect them.

The *locus standi* of the Caledonian railway company was objected to, because (1) they are represented as ratepayers by the Edinburgh and district water trust, and also by the corporation of Edinburgh, which bodies are joint

promoters of the bill; (2) the petitioners disclose no ground for being heard which is not common to all the ratepayers, owners of lands and heritages, and consumers of water.

The *locus standi* of the Edinburgh and Leith wine, spirit, and beer trade association was objected to, because (1) they describe themselves as ratepayers and complain of proposed rating, but they cannot be heard on such ground, being represented by the water trustees, and also, insofar as they are ratepayers in Edinburgh, by the corporation of Edinburgh, the joint promoters of the bill; (2) the petitioners cannot be heard under the description of owners or occupiers of lands, houses, and other property, or upon the allegation that the bill will injuriously affect them and their business and the houses, shops, and property belonging to and occupied by them respectively, no such house, shop, or other property being taken under or affected by the bill.

Pember, Q.C. (for Caledonian railway company): The bill will authorise the water trustees to levy, besides a "domestic water-rate," a public water-rate upon all lands and heritages within their limits of supply; and portions of our main line, and of our Granton branch, together with the whole of our stations and mineral depôt at Edinburgh and Leith, would be subject to such rate. At present we only pay the trustees for the quantity of water actually supplied; the public water-rate will tax us for purposes from which we derive no benefit. Then, under their Act of 1869 (section 63), the trustees are bound to supply us with water for railway purposes at such rates as, failing agreement, shall be fixed by the sheriff of the county, not exceeding 9d. for every thousand gallons where the supply taken, as in our case, exceeds 100,000 gallons yearly. The bill, on the contrary, while authorising agreements between the trustees and railway companies, provides (sections 29 and 49) that the supply of water in such cases shall be furnished only at rates to be so agreed on, or as may be thought fit by the trustees; and by section 50, every person using for other than domestic purposes water supplied by the trustees, without having previously agreed with them for such supply, will be liable to heavy penalties. Besides claiming a right to be heard against those clauses as occupiers, we seek to be heard as owners, whose property may be depreciated, and whose status is changed under the bill. (*St. Helen's Improvement Bill*, 1 Cliff. & Steph. 55.)

Campbell (for the wine, spirit, and beer trade association): The petition is signed on behalf of the association, as well as by 464 brewers, wine and spirit merchants, and others, being ratepayers, owners, and occupiers within the limits of compulsory water supply. We, therefore, claim a *locus standi* in three capacities: as traders, as ratepayers, and as owners and occupiers. As traders, we object, with the Caledonian railway company, to clauses 29 and 49, which vary section 63 in the Act of 1869. Under that section the water trustees are bound to supply brewers, distillers, manufacturers, hotel-keepers, or other persons requiring a large quantity of water, and such consumers have three checks against overcharge—an appeal to the sheriff, a maximum rate of 9d. per thousand

gallons, and a provision that "as far as possible, the rates for such supply shall be uniform." The bill will do away with all these safeguards. We ask to be heard against clauses 25, continuing the existing obligations of the trustees "subject to the provisions of this Act;" 29, empowering the trustees to agree with persons requiring large quantities of water; 30, which deprives some of the petitioners of the benefit of the existing maximum shop-rate of 3d. in the pound; 49, authorising the trustees, subject to the provisions of the Act, to supply water for other than domestic purposes on such terms, pecuniary or otherwise, and conditions as the trustees think fit; and clause 50, imposing penalties for using water for other than domestic purposes without agreement. As traders, our *locus standi* does not seem to be disputed. As ratepayers, we say that the water trustees are not keeping faith with us, for whereas they obtained the confidence of the ratepayers upon the assurance that this was to be a cheap scheme, we now find them asking for an unlimited domestic water-rate, instead of the shilling maximum in the old Act, and they also ask power to impose a public water-rate of one penny in the pound on owners and occupiers. Seventy of the petitioners reside in Leith, and the municipal body of Leith do not appear; so it is clear these seventy are not represented by the corporation of Edinburgh. About half the petitioners own the premises they occupy, and, as owners, we claim a *locus standi* on the ground put forward by the Caledonian railway company.

Clerk, Q.C. (for promoters): The Caledonian railway company occupy the premises to which the new water-rate will apply. They, therefore, have a vote, and, as ratepayers, are represented by the corporation of Edinburgh; and they do not say that, as owners, their property will be depreciated in value by the imposition of the new rate. Section 63 of the Act of 1869 is not abrogated by the bill, nor does it alter the relations subsisting between consumers and the water trustees.

The CHAIRMAN: It is a question of interpretation, and not an easy question.

Pember: Yes; and that is enough to give us a *locus standi*.

Clerk: On the part of the trustees I undertake that all the powers of consumers, under section 63 of the Act of 1869, shall be preserved.

Mr. RICKARDS: We must give a *locus standi* to the Caledonian company to secure that this is done.

Clerk: As to the trade association, there is nothing in the bill affecting them and their co-petitioners as traders. We propose to substitute an unlimited domestic water-rate for one limited in amount; but the bill provides that in the case of occupiers of shops, workshops, offices, or warehouses, where water is not used for business purposes, such rate shall not exceed 3d. in the pound.

The CHAIRMAN: Mr. Campbell says the result would be, that, where the water was not used for business purposes, the rate would be unlimited, and such consumers would lose the benefit they now have under the Act of 1869.

Campbell: By that Act shops are charged 3d. in the pound; but under the bill this limit of

3d. will only continue "where water is not used for business purposes."

Clerk: No doubt that is a change, but it is one affecting all occupiers of business premises, and has been proposed with the full concurrence of those to whom the matter has been referred.

The CHAIRMAN: The *locus standi* of the Caledonian Railway Company is Allowed against clauses 25 [supply for other purposes than those mentioned in the Act], 29 [power for trustees and companies to enter into agreements for supply of water], 30 [domestic water-rate to be levied], 49 [power to trustees to supply water for other than domestic purposes], 50 [penalty for using water for other than domestic purposes without agreement], and 59 [recited Acts applied], and so much of the preamble as relates thereto.

The *locus standi* of the Edinburgh and Leith Wine, Spirit, and Beer Trade Association and Others is Allowed against clauses 25, 29, 30, 49, and 50, and so much of the preamble as relates thereto.

Agents for Caledonian Railway Company, Grahames & Wardlaw.

Agent for Wine, &c., Trade Association, Robertson.

Petition of (5) TRUSTEES AND LOCAL AUTHORITY OF DALKEITH.

Practice—Objections—Traverse of Allegations not in Petition—Evidence rejected.

Water Bill—Water Trustees—Local Authority—Municipal Corporation—Abstraction of Water—Potential Rights in Water—Contingent Interest—Right of user—Representation.

In objections to *locus standi*, certain allegations of fact were made which did not traverse any statements in the petition, and, though meeting the case of the petitioners, formed substantially new matter. At the hearing, these allegations were disputed by petitioners. Upon the tender of documentary proof by promoters:

Held, that evidence can only be admitted in support of statements made by petitioners, and traversed by promoters, and that to allow proof of new matter urged in objections would be virtually to enter upon merits.

The corporation of Dalkeith were empowered by statute to purchase, when so minded, a portion of the water undertaking, of which the corporation of Musselburgh were trustees. Under a bill for improving and increasing the supply of Edinburgh, abstraction of water was authorised from a stream which

formed one of the sources of supply to Musselburgh. The right of the corporation of Musselburgh, under these circumstances, to oppose the bill was admitted; but the corporation of Dalkeith also petitioned:

Held, that the contingent interest in the stream, and in the Musselburgh undertaking, possessed by the petitioners, was not sufficient to support a separate *locus standi*, and that they were adequately represented by the corporation of Musselburgh.

The *locus standi* of the Dalkeith trustees and local authority was objected to, because (1) the Musselburgh and Dalkeith water trustees petition against the bill and represent the petitioners; (2) the Musselburgh and Dalkeith Water Act, 1871, provided that if the local authority of Dalkeith should obtain powers to purchase so much of the works and undertaking as might be necessary for the supply of Dalkeith and places adjacent with water, the Musselburgh and Dalkeith trustees should be bound to sell that part of the undertaking to the Dalkeith local authority; but the latter had not only not obtained such powers, but had declined to take water supplied under the Musselburgh and Dalkeith Water Act; (3) the petitioners have no interest in the water supply sought to be provided under the bill.

Mundell, Q.C. (for petitioners): The bill proposes the construction of the Gledhouse reservoir for impounding one or more of the burns in the upper part of the South Esk river; and the Musselburgh and Dalkeith Water Act, 1871, authorises the trustees under that Act (the corporation of Musselburgh) to construct a reservoir on the same river. Under the Act the local authority of Dalkeith have power to purchase part of the undertaking; but the proposed Gledhouse reservoir would abstract the water thus appropriated by Parliament for the use of Musselburgh and Dalkeith. We have received notice to produce certain evidence, not in support of allegations in our petition, but in support of allegations in the objections; but it is not the practice of the Court to call upon petitioners to substantiate objections. The corporation of Dalkeith, who are the trustees under the Musselburgh and Dalkeith Act, 1871, are said to represent us; but we have no voice in their election, and that objection is, therefore, untenable.

The CHAIRMAN: The promoters say, in their second objection, that you might have purchased the Musselburgh and Dalkeith undertaking; but you have never done so, and that, therefore, as you have never exercised your powers, you are not in a position to oppose when the parties who have the right to deal with you petition against the bill.

Mundell: Yes; but we may treat at any time for the purchase of the undertaking, and we are not therefore concluded, because we have not yet exercised our powers.

Clerk, Q.C. (in reply): We admit the *locus standi* of the Musselburgh and Dalkeith water trustees, as we deal with the same sources of

water from which they are supplied. They are the proper parties to appear. The Dalkeith local authority can only ask to be heard, because they have the power of calling upon the Musselburgh and Dalkeith water trustees to sell a part of the undertaking.

Mr. RICKARDS: They have a potentiality of using the water.

Clerk: Yes; and they have decided that question by saying that they do not intend to use the water, and by promoting another scheme. I can prove that they have decided to get water from another source.

Mundell: I do not admit that.

Clerk: Here is documentary proof.

Mr. RICKARDS: The petitioners say you have no right to prove allegations in your objections, which do not arise on the petition. The object of objections is to point out what parts of the petition you deny, and to raise the issue whether, assuming the allegations in the petition to be true, they establish a case of *locus standi*. But you cannot allege in the objections facts not set up in the petition, and ask to prove those facts by evidence.

Clerk: If you hold that, supposing a petitioner in general terms to say, "I am entitled to certain rights," the promoters cannot reply—"You are not entitled to appear, because you have parted with those rights," *cadit questio*.

Mr. RICKARDS: If you traverse in your objections the statement that he is entitled to those rights, the petitioner must establish them by evidence. You thus throw the issue upon him.

The CHAIRMAN: You say you are entitled, in the notices of objection, to set up and prove by evidence an allegation which is not a traverse of any allegation in the petition. If that is allowed, do we not at once enter upon the question of merits?

Clerk: I will not trouble you further upon the point, but submit that the contingent interest in the South Esk water possessed by the petitioners gives them no right to appear in addition to the Musselburgh trustees, who are the natural guardians of the South Esk water, and from whom alone Dalkeith can receive it.

Locus standi Disallowed.

Agents for Petitioners, Connell & Hope.

Agent for Bill, Graham.

FAREHAM RAILWAY BILL.

Petitions of (1) SOUTHAMPTON HARBOUR AND PIER BOARD; (2) CORPORATION OF SOUTHAMPTON.

14th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; and Mr. RICKARDS.)

Railway—Pier—Harbour Board—Jurisdiction of, interfered with by Railway Company—Pier Tolls—Creditors—Mortgagees—Obstruction to

Navigation—Abstraction of Traffic—Competition—Apprehended Injury from possible future Schemes—Too remote—Municipal Corporation—Statutory charge of, upon Harbour Rates—Right of, to protect such charge—Representation.

A harbour board, who were by statute made conservators of the navigation of Southampton water, with power to remove obstructions within the limits of the harbour, also possessed a pier, and were authorised to levy tolls and rates upon passengers and goods landed there, the Act requiring that, in certain specified cases, all steam vessels should land their passengers at such pier, until an existing mortgage upon the pier tolls was extinguished. A railway company now proposed to construct a line terminating at a point in the sea, below low water mark, and within the jurisdiction of the harbour board, but about eight miles from the pier. The bill was opposed by the harbour board on the ground of obstruction to the navigation, apprehended abstraction of traffic, and consequent loss of revenue and impairing of the security for money they had borrowed. The bill was also opposed on the same ground by the corporation of Southampton, who formed a large majority of the harbour board, and were entitled by statute to one-fifth of the revenue of the board:

Held, that the corporation could not be heard at all; and as to the harbour board, that apprehension of injury arising from future possible abstraction of traffic afforded no sufficient ground of *locus standi*, but that they were entitled to be heard against clauses which would authorise interference with the navigation.

The *locus standi* of the Southampton harbour and pier board was objected to, because (1) the bill does not interfere with the property, claims, rights, or interests of the petitioners so as to entitle them to be heard; (2) the bill does not sanction the making of any public piers or quays, or the levying of tolls for embarking animals, passengers, or goods, but sanctions an ordinary railway terminating in the sea; (3) such railway will not injure the port and harbour of Southampton, or interfere with the due fulfilment of the petitioners' duties and obligations; (4) according to Parliamentary usage the petitioners have no right to be heard as competitors with the proposed undertaking; (5) their mortgagees and creditors are not parties to the petition, and even if they had been they would not be entitled

to a *locus standi*; (6) the petition alleges no ground of objection on which the petitioners are entitled to be heard.

The *locus standi* of the corporation of Southampton was objected to for reasons 1, 2, 4, 5, and 6.

Littler, Q.C. (for Southampton harbour and pier board): The board was constituted by an Act of 1863, which vested in them, and empowered them to maintain, the existing piers and works; to keep open certain channels in Southampton water; remove all obstructions within the port and harbour, and levy tonnage and boomage dues and pier tolls. There was in 1863, and still is, a considerable charge upon the pier tolls as well as on other dues; and until the mortgage on the pier tolls is paid off, two sections in the Act of 1863 compel the owners of all passenger steam-vessels arriving in the port, either to compound for pier tolls, or to land their passengers at the pier upon being required so to do by any five passengers, under penalty in case of refusal by the captain. These sections were intended by Parliament as an additional security to the mortgagees. We expend every year considerable sums in maintaining the port and harbour, and buoying, booming, and keeping open the channels; and it is clear that not only the harbour board, but their creditors must be injured by any plan which contemplates the establishment of an independent pier, and the consequent diversion of traffic from the existing pier. The promoters say they do not propose to make a pier, or to levy any tolls for embarking or landing passengers or goods. But they propose to charge through fares and rates, and can easily include an amount which will cover the tolls on what we say will be a pier. At present all passengers to the Isle of Wight have to pay tolls at our pier.

Mr. RICKARDS: You are supposing a pier to be constructed for which no power is taken by the bill, and you are supposing a line of imaginary steamboats plying to and from the pier. We do not give a *locus standi* on the ground of possible injury which may arise from future schemes in contemplation. Your case is that this is a step towards competition?

Littler: If we do not meet them now, we shall be answered—"Why did you not come before?" Besides, this is a step which, as far as Parliament is concerned, may be final. If they do not elect to charge a separate toll for the pier, but include it in their tolls for passengers, charging nothing for the steamers coming there, the promoters can go on without coming to Parliament.

Mr. FORSTH: You say in effect, "The railway will end below low water mark; it will be made upon piles; and the Parliamentary powers now sought will enable the promoters so to construct the railway, that steamers may come there and take off passengers;" and you say that, if the railway be so used, you will be damaged by the loss of tolls?

Littler: Yes; the only object of the railway is to land and embark passengers. Then we say that the proposed line will terminate below low water mark in the bed of the sea at Hill Head, a point of Southampton water within the

limits of the port and harbour of which we are conservators, and the bill actually empowers the company to dam or stop up the old channel to Hill Head harbour.

Mr. FORSYTH: Is that old channel used?

Little: It is used for small craft.

Mr. FORSYTH: And you have power to enlarge or improve it?

Little: We have full control over the whole harbour, with power to deepen, dredge, or remove obstructions. If the promoters did, without statutory authority, what they now propose to do at Hill Head, we could pull down their works, because they would be an obstruction within our jurisdiction.

Wakeford, Parliamentary Agent (for corporation): The facts and arguments urged by Mr. Little apply to the case of the corporation. They were the harbour commissioners up to 43 Geo. III, which constituted a harbour board; and under that Act they relinquished certain duties before payable to them—"petty customs," anchorage, groundage, wharfage, and cramage duties—and instead thereof, received one-fifth of the actual tolls and dues. The corporation are, therefore, interested to the extent of this one-fifth in the income of the harbour board; they have borrowed money on the security of this one-fifth; and are entitled to contend before the Committee that nothing should be done to impair this security, or diminish the income of the harbour board.

The CHAIRMAN: The corporation take no part in the management of the harbour?

Wakeford: No; they are simply recipients of one-fifth of the gross receipts.

Mr. RICKARDS: Do the harbour board and corporation consist of the same individuals?

Wakeford: The harbour board consists of 40 members of the corporation, ten special members (exporters and importers) and the Recorder.

Gale, Parliamentary Agent (for promoters): Not a word about competition is said by the harbour board. What we propose is, to make a railway terminating in the sea near Calshot Castle, about eight miles from Southampton pier, and in a similar case—(*Havant and Hambledon Railway*, Smeth. 142)—the *locus standi* of the South Western railway company was disallowed. As to the corporation, they are, in effect, mortgagees, and cannot be heard. (*Great Western Railway Bill*, *Petition of Debenture Holders*; post, p. 82.)

The CHAIRMAN: The *locus standi* of the Corporation is *Disallowed*; the *locus standi* of the Southampton Pier and Harbour Board is *Disallowed* as to competition, but *Allowed* as to Clause 5 [construction of railway], and Clause 6 [power to dam or stop up channel to Old Head harbour].

Agent for Bill, Gale.

Agents for both Petitioners, *Simson, Wakeford & Simson*.

FORFARSHIRE ROADS BILL.

Petition of COMMISSIONERS OF MONTROSE BRIDGE.

11th May, 1874.—(Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Roads—Abolition of Tolls—Toll Bridge—Debt upon—Apprehended Diversion of Traffic—Improvement of Existing Communication—Imperfect scheme.

A bridge across a river at Montrose was vested by statute in commissioners, who were empowered to levy tolls for its maintenance, and had borrowed money on the security of the tolls. The commissioners, whose Act described the bridge as of "great public utility," as well as of local convenience, now opposed a bill, the object of which was the abolition of tolls on the roads within the county. It was admitted that the bill did not affect the bridge directly, but the petitioners contended that traffic would be diverted, and that persons would be able to adopt a toll-free route, avoiding the bridge, and so lessening the toll income. On the other hand, the promoters maintained that to abolish tolls on the roads would be to remove obstructions and facilitate access to the bridge, but that even if the bridge revenue should suffer, the public improvements contemplated by the bill afforded no ground for opposing it:

Held, that the petitioners were entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) they do not allege that the bill confers power to take or otherwise interfere with any lands, &c., belonging to them, or to impose any assessment thereon, or to abolish or alter any tolls leviable by them; (2) they are not entitled to be heard to object, as they do, that the bill contains no provisions affecting the bridge and approaches belonging to them, or under their management, or (3) to object to the contingent abolition of tolls upon roads which do not belong to them, and which are not under their management or subject to their jurisdiction or control; (4) they cannot be heard according to practice.

Shiress Will (for petitioners): The petitioners are proprietors of the suspension bridge across the South Esk, at Montrose, which forms part of the great post road to and from the north of Scotland; and in the statutes incorporating the commissioners, the bridge is mentioned as being one

"of great public utility," as well as of "great local benefit and convenience." The bill proposes to authorise the compulsory transfer of the statute labour roads and bridges, in the county of Forfar, to trustees, and it will also enable the trustees of turnpike roads, by agreement, to transfer these roads to the trustees to be appointed under the bill, making both descriptions of roads free of toll, and maintaining them by means of a uniform assessment on lands and heritages. We complain that the bill should be limited to these roads, and should not recognise our bridge as a connecting link in the greatest post road in Scotland. One result of such legislation might be to abolish the whole of the road tolls in the county, leaving the Montrose bridge alone subject to tolls; and, in any case, traffic must be diverted from the bridge to a route which is toll-free, thus diminishing our revenue and preventing us from keeping faith with our creditors in respect of money raised on the security of our tolls.

Mr. RICKARDS: Your case is that, though the bill does not touch the bridge, the result of freeing the other roads from tolls would be that travellers would give the go-by to your bridge?

Will: Yes; we also claim to be heard as owners of lands and heritages, which will be liable to be rated under the bill.

Loch, Q.C. (for promoters): You cannot be heard on that ground, which is nowhere mentioned in your petition.

Will: Not in precise words, but we allege that we are proprietors of the bridge and its approaches.

Mr. RICKARDS: The only grievance appearing on the face of the petition is that your bridge will lose toll; there is no statement that the bill will impose new burdens upon you as owners.

Will: Abstraction of traffic is no doubt the gravamen of our petition, and where such abstraction is apprehended, persons affected, whether bridge-owners or ferry-owners, are usually heard. (*Kew and other Bridges Bill*, 1 Cliff. and Steph. 118; *Northampton, &c., Railway Bill*, Smeth. 158; *Thames Subway Bill*, Ib. 162.)

Loch, Q.C. (in reply): Surely if the roads are freed from toll, the result will be to facilitate access to this bridge and improve its revenue, instead of diminishing it. This result is the more probable because the chances are that the roads leading to this bridge will be the first to have their tolls abolished. The *Kew Bridge* case is not in point, because it was alleged to be in competition with the petitioners' bridge at Hammersmith; if the question had been, as it is here, merely improvement of an existing communication, there would have been no ground of *locus standi*. We are doing nothing to create competition with the Montrose bridge. We are not building a new bridge; we only propose to improve the communication with the existing bridge. The removal of tolls is virtually the removal of obstructions; in principle it resembles the shortening of an existing route; and the *Lancashire and Yorkshire, &c., Steamboats Bill*, *Petitions of Midland and Furness Railway Companies* (2 Cliff. and Steph. 59) is an analogous case.

Mr. RICKARDS: It seems rather an imperfection in a bill freeing county roads from tolls that the promoters should not deal with all the tolls, and that they should leave a toll bridge in the middle of the communication.

Locus standi Allowed.

Agents for Bill, *Grahames & Wardlaw*.

Agent for Petitioners, *Gloag*.

GLASGOW AND SOUTH WESTERN RAILWAY BILL.

Petition of CALEDONIAN RAILWAY COMPANY.

22nd April, 1874.—(*Before* Sir JOHN ST. AUBYN, M.P., *Chairman*; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies—Joint Ownership of Stations—Admission of Third Company to user of Stations—Competition—Expenditure by Third Company—Virtual Amalgamation.

The Glasgow and South Western and Caledonian railway companies were joint-owners of stations at Glasgow. The former company now promoted a bill admitting the Midland railway company to equal rights with themselves in the use of these stations. The Caledonian company opposed the bill in right of their joint ownership, urging also that it was a step towards a practical amalgamation between the Glasgow and South Western and Midland companies, who were already acting in concert under a working agreement. The petitioners also claimed to be heard on the ground of competition:

Held, that they were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) it is not alleged that such competition or partial amalgamation will result from the bill as entitles them to be heard; (2) the statements in the petition as to past and future acts of the promoters and of the Midland railway company do not entitle the petitioners to be heard; (3) the bill does not provide for such an alteration in the relations between the Glasgow and South Western railway and the Midland railway, and (4) does not affect the rights and interests of the petitioners, in such a way as entitles them to appear.

Pember, Q.C. (for petitioners): We claim a *locus standi* because the bill proposes to introduce the Midland railway as third partners in certain

stations, of which we are at present joint-owners with the promoters alone.

The CHAIRMAN: Does that joint-ownership exist under statute?

Pember: Yes. The bill is a step towards the amalgamation of the Midland and the Glasgow and South Western railways, and will in effect be a practical amalgamation. They have twice failed in getting a bill passed for such amalgamation, and they now try to obtain the result by a side wind. If it were an amalgamation bill we should have a *locus standi*. It is so practically, though not nominally. If the bill is passed the Midland railway will become powerful competitors with us.

Cripps, Q.C. (for promoters): This is not an amalgamation bill. It merely enables the Midland railway company to expend money on stations, &c., of the promoters, the Midland company being benefited by these stations. No new competition is introduced. We do not propose to make the Midland partners in the stations. We merely ask that they may be allowed to exercise rights which we possess.

The CHAIRMAN: The *locus standi* of the Caledonian Railway Company is *Allowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Grahames & Wardlaw.*

GLASGOW, BOTHWELL, HAMILTON, AND COATBRIDGE RAILWAY BILL.

Petition of THE DUKE OF HAMILTON AND BRANDON.

16th April, 1874.—(Before Mr. H. C. RAIKES, M.P., Chairman of Committees, in the Chair; Sir JOHN ST. AUBYN, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Petition of Landowner—Signature by Agent—Absence of Principal—Agent—Factor—Commissioner, petitioning for Principal—Power of Attorney—General powers not including Specific Power to Petition—S. O. 21—Practice.

The question raised in this case was whether a landowner could be heard who had not himself signed the petition, but whose agent had signed for him, using the name of his principal, with the added words, "by his commissioner and attorney," and then appending his own name. A power of attorney in the Scotch form was produced, by which the landowner gave to his agent the most ample powers over his estates in Scotland, which the agent might charge, or even alienate at his discretion, with the right of bringing or defending actions, &c. But the specific power to subscribe petitions,

or otherwise act in Parliament, was not given. It was argued that the greater included the less, and that if the agent might at his discretion sell every acre, *à fortiori* he might protect the property from injury by private legislation, and might accept clauses, and assent or dissent thereto:

Held, that the landowner, in whose name the petition proceeded, was entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) the petition is not signed by the duke, in whose name it proceeds, although he was in England at the time it was prepared; (2) Mr. Henry Padwick, by whom the petition is signed on behalf of the duke, had no authority given him so to sign; (3) if any such authority existed, it was for the time superseded by the fact of the duke's presence in the country; (4) for the above reasons the duke is not entitled to be heard; (5) all the lands referred to in the petition are vested in trustees, who are the legal owners, and they have not petitioned; (6) the duke is not owner, lessee, or occupier of any lands to be taken under the bill; (7) only one of the proposed railways will interfere with the lands mentioned in the petition, and any opposition to the bill in respect of such lands should be confined to that railway, and not allowed against the whole preamble.

Little, Q.C. (for petitioner): The petition is signed "Hamilton and Brandon, by his commissioner and attorney, Henry Padwick." As to objection (1), the duke was not in the country at the time the petition was prepared and deposited, but at Cairo; (2) the duke by a faculty or commission (equivalent to a power of attorney in England) gave full power to Mr. Henry Padwick to act for him in all matters relating to his Scotch estates, which would cover the signing of petitions; (3) even if the duke had been in the country, Mr. Padwick had full power to act for him. The statement in objection (5) is untrue, the fact being that though the duke's estates were formerly in the hands of trustees they have been reconveyed to him. Here is the actual reconveyance of the lands to the duke.

Pope, Q.C. (for promoters): The practice of Parliament is this: A petition may be signed by an agent of a party duly authorised to sign it, provided the principal is not in the country at the time the petition is deposited; if he is in the country, the rule is that the petition must be personally signed. If we are told that the Duke of Hamilton was in Cairo at the time the petition was deposited we will accept that statement.

Little: Mr. Padwick can prove that. There is no S. O. that a petitioner shall personally sign a petition.

Mr. RICKARDS: Will you read the material parts of the document which you say authorises the agent to sign petitions?

Little: The document is registered 24th December, 1873. The words of it are: "Considering that I am frequently absent from Great Britain, and that for this and other reasons it is

necessary for me to appoint a proper person to manage my affairs and conduct my business in this country, and particularly in Scotland, on my behalf. I constitute and appoint the said Henry Padwick to be my factor and commissioner to the effect after-mentioned, and I give, grant, and commit to the said Henry Padwick full power, warrant, and commission for me, and in my name to manage my whole business affairs in Scotland as he shall think fit and expedient." "And I hereby authorise and empower the said Henry Padwick for me, or in my name to sign and present all petitions of service" (which I am told is part of the procedure in completing a title), "and to act as fully and freely as I myself might do personally. And I hereby give full power and authority to the said Henry Padwick generally to do everything ament the premises" (that is to say, the Scotch estates), "which I could do myself if I were personally present, or which to the office of factor and commissioner is known to the law. And I do hereby give full power and authority to the said Henry Padwick to bring all necessary actions, and generally all actions of law of every description, which he may think necessary to vindicate my rights whether directed against my tenants, or any other persons whomsoever." Although there is no express authority *totidem verbis* to sign petitions to Parliament, yet, if a man is away from this country from the time of serving the notices till after the time of petitioning, and there are no means of communicating with him, there is no authority for saying that an agent may not petition against a bill, though he may not have authority given him for that express purpose. This document is not like an ordinary power of attorney which revokes itself, as it were, by the re-appearance of the principal in England; but here there is an express power for the agent to act, whether he be present or absent.

Mr. RICKARDS: The rule in regard to public petitions is, that every petition must be signed by the parties whose names are appended thereto, and by no one else, except in case of incapacity by sickness. Is there any authority for a petition against a private bill, signed by an agent, being received as the petition of the principal?

Littler: We say there is no authority to the contrary. There are cases where the signature of members of a committee authorised by a public body to sign have been held sufficient; all that is necessary is to see that the person signing is really the person who may be fairly and reasonably said to be authorised. Is it to be said that an agent with powers like Mr. Padwick is not authorised in the absence of the principal to sign a petition which is to protect the corpus of his principal's estate from irretrievable damage? By S. O. 21, in the absence from the United Kingdom of the principal, notice may be served on his agent. *Mutatis mutandis*, the agent, who is in this case Mr. Padwick, surely is entitled to petition in the name of his principal. Objection 7 seeks to limit the *locus standi* to a particular railway, but the petition is against both lines of railway, and though only one touches our property, Nos. 1 and 2 are inter-communicative, and one would be

useless without the other. A landowner is entitled to be heard against the whole bill. (*Lords & North Western Railway*, 1 Cliff. & Steph. 62; *Calderdale Railway Bill*, 2 Cliff. & Steph. 37.)

Pope (in reply): The only case distinctly bearing upon the point raised here is the case of *The West Houghton Gas Bill* (2 Cliff. & Steph. 100). There the petition of the trustees of the Duke of Bridgewater was signed by Mr. Egerton, the acting trustee for the duke's trustees. The objection to the *locus standi* was withdrawn, but only upon the statement of the Parliamentary Agent for the duke's trustees, "that he knew that a power of attorney existed authorising Mr. Egerton who signed the petition to sign petitions to Parliament on behalf of the Bridgewater trustees." No such authority is shown here. Mr. Padwick has no other power except that which he receives under the instrument, by virtue of which the power exists, and which does not cover authority to petition Parliament. The authority is defined and therefore is limited—*expressio unius est exclusio alterius*. The instrument must be interpreted consistently with the state of the law, and with its proper legal signification. The duke cannot, by such an instrument as has been produced, have clothed a third person with authority to deal with Parliament. If admitted at all, the petitioner ought to be limited to line No. 2, which alone touches his park.

Mr. RICKARDS: It will be for the Committee to limit him to his petition.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioner is *Allowed*.

Agents for Bill, *Loch & MacLaurin*.

Agents for Petitioners, *Grahames & Wardlaw*.

GLOUCESTER AND BERKELEY CANAL BILL.

Petition of (1) MIDLAND RAILWAY COMPANY;
(2) GREAT WESTERN RAILWAY COMPANY.

15th June, 1874.—(Before Mr. BRISTOWE, M.P.,
Chairman; Mr. RICKARDS; and Mr. BONHAM-
CARTER.)

Canal — Amalgamation — Docks — Navigation
Commissioners — Through Rates for Water
Transit — Competition between Railways and
Canals — Abstraction of Railway Traffic — Im-
provement of Existing Competition — Lease of
Canal, by Canal Company — Canal Companies
as Carriers — Agreement by Canal Company to
Share Surplus Profits of Railway — Agreement
— Goods' Traffic of Railway Company, restricted
by — Attempted Repeal of Restrictions on
Traffic — Canal Carriers' Act, 1845 (8 & 9
Vict., c. 42) — Practice — *Locus Standi*, Admis-
sion of in House of Lords — How far binding in
House of Commons.

The Gloucester and Berkeley canal company, who owned docks at Sharpness and Gloucester, and whose canal communicated at either end with the Severn, sought for power (*inter alia*) to amalgamate with the Worcester and Birmingham canal company. The bill also enabled the Severn navigation commissioners, a public body, to join with the promoters in charging a through rate, so that goods might pass by water from the promoters' docks to Birmingham and other places at one toll instead of three. The bill was opposed on the ground of competition by the Great Western and Midland railway companies, both having actual or authorised railway communication with the promoters' docks at Sharpness and Gloucester, and both alleging that under the bill the promoters' interest would lie in forcing the traffic from their docks and canal to go exclusively by water, whereas now they had no interest in forwarding it by water in preference to rail. The Great Western company also petitioned as owners of a canal communicating with the Worcester canal, apprehending that abstraction or obstruction of their canal traffic would result from the proposed amalgamation; and the Midland company alleged certain obligations entered into by them with the Worcester canal company, which would become more onerous if this company ceased to be independent. For the promoters it was urged that no new competition would be caused by the bill, which would merely improve an existing route:

Held, that both petitioners were entitled to a *locus standi*.

The bill was one for vesting in the Gloucester and Berkeley canal company the Worcester and Birmingham canal. It also authorised the promoters to lease the Droitwich canal, the lease of which by the Worcester company would shortly expire; it enabled the promoters and the Severn navigation commissioners to arrange for the interchange and accommodation of traffic; and it authorised the promoters to lay down, by agreement, tramways and railways in connection with their docks, and acquire other tramways and railways already laid down by other persons.

The *locus standi* of the Midland railway company was objected to, because (1) no property or rights of theirs are interfered with; (2) their present position will remain unaltered by the bill which (3) confers no new powers upon the promoters and the Worcester and Birmingham canal company to become carriers of traffic or

to compete to a greater extent with them; (4) there is nothing injurious to them, or contrary to public policy in the bill, and their apprehensions that the bill will destroy competition are unreasonable; (5) the Midland branch railway to the promoters' docks, at Sharpness, was not undertaken at their request, and no such diversion of traffic arises out of the bill as entitles the petitioners to be heard; (6) they have undertaken towards the Worcester and Birmingham canal company no obligations or restrictions in working under agreement the Birmingham West Suburban railway, which will be prejudicially affected by the bill; (7) petitioners cannot be heard in behalf of the Birmingham West Suburban railway company, who will not be interfered with, and who were heard before the House of Lords, but do not now oppose the bill; (8) petitioners cannot ask Parliament to repeal the restriction placed upon the Birmingham West Suburban company, when they made their railway along the Worcester canal, more especially as this railway company do not appear to ask such repeal themselves; (9) the position of the petitioners will remain unchanged, and there are no allegations of grievance entitling them to be heard according to practice.

The *locus standi* of the Great Western railway company was objected to, because (1) no property or rights of theirs will be interfered with; (2) the powers sought by the bill will in no way alter their present position; (3) if the Worcester and Birmingham canal is vested in the Gloucester and Berkeley canal company, the communication by the petitioners' canal will be rather facilitated than obstructed, as alleged; (4) the bill does not authorise the promoters to become carriers of traffic. All canal companies have at present such power if they choose to exercise it, so that the position of parties will not be altered in that respect; (5) the bill will not enable the promoters to compete with or divert traffic from the petitioners' railway to a greater extent than they are able to do at present; (6) no new competition will be created, and if any diversion of traffic can be shown as likely to arise, it will not be to such an extent as to give a *locus standi*; (7) the allegation of want of facilities to railway companies is not well founded; the bill does not restrict existing facilities at Gloucester, and provides for their eventual increase by (8 and 9) the construction of tramways, railways, sidings, tips, and other conveniences, and the acquisition of existing tramways, and there is no ground for the petitioners now to ask for additional facilities and running powers; (10) the provisions in the bill for the maintenance of the Worcester and Birmingham canal impose a new and more stringent obligation on the promoters, and provide a remedy in case of default, in addition to the obligations of the Worcester and Birmingham company under previous legislation and otherwise, and the petitioners cannot be heard against such provisions, nor against the power to lease the Droitwich canal; (11) any addition to the traffic by canal between Gloucester and Worcester, or Birmingham, must pass over the Severn navigation for many miles, and the revenue would thereby be increased rather than diminished.

The extension of section 7 of the Canal Carriers' Act to the Severn navigation merely permits the commissioners to join in making a through rate; (12) the Severn navigation commissioners are cognisant of the bill, and do not object to it, and the petitioners cannot be heard on their behalf; (13) the petitioners disclose no grievance entitling them to be heard consistently with practice.

Venables, Q.C. (for Midland company): The promoters are at present owners of a ship canal from Gloucester to Sharpness, but not carriers of traffic. They now propose to become owners of the Worcester canal which communicates with their canal by means of the Severn, intending, as we allege, to become carriers between Sharpness docks and Gloucester on the one hand, and Birmingham and other places reached by the Worcester canal, and canals in connection therewith, on the other hand. Such a proposal, we say, is contrary to public policy, and if sanctioned will destroy the healthy competition that now exists. We also object that the proposed transfer will prejudice our interests on account of certain obligations and restrictions which we have undertaken towards the Worcester and Birmingham canal company. In 1871 the Birmingham West suburban railway obtained an Act to make a railway running to a great extent alongside this canal, and in consideration of the land thus appropriated by them, they agreed (*inter alia*) to pay the canal company an annual rent-charge of £1,400, and a moiety of their surplus profits after paying the West Suburban shareholders' dividends at the rate of £5 per cent. per annum; and they also agreed not to carry on their railway, without the consent of the canal company, certain goods described in classes mineral and special of "Railway companies' regulations." The Midland company, under agreement, now work and maintain the Suburban railway, subject to the restrictions in the Act of 1871. When we undertook to work the line, we looked, of course, to its position in relation to the Worcester canal, but the effect of the Bill will be to alter that position materially. The promoters by acquiring the Worcester canal will have an interest in maintaining and enforcing the existing restrictions upon the carriage of mineral and other traffic, so as to enable them to compete to greater advantage with us as carriers, whereas it would have been to the interest of the Worcester company to waive those restrictions and so increase the dividends of the Suburban railway company. We therefore claim to be heard with a view to repeal these statutory restrictions. So long as things remain as they are, we are bound by our agreement, but if the Worcester canal company ceases to be independent, the relative position of the parties becomes changed, and we claim to be heard in order to protect ourselves. The amalgamated canal companies will have different interests from those of the Worcester company before amalgamation. When the bill was before the Lords, the *locus standi* of the Suburban railway company was expressly admitted, and that of the Midland railway company was not objected to.

Mr. RICKARDS: Unless the bill is now exactly similar to what it was in the House of Lords, the

course taken in the Committee of the House of Lords on the question of *locus standi* would not influence our decision.

Granville Somerset, Q.C. (for promoters): The Bill has been materially altered since that time, not as regards the West Suburban company, but as regards the Midland company.

Venables: We say in our petition that the consideration to be paid by the promoters for the Worcester canal in no way represents actual outlay on the canal, or a fair annual return upon such outlay; and hence it will be possible for the canal company, and will also be to their interest, to reduce rates for carriage on the Worcester canal for the purpose of competition with us, and without regard to the unremunerative character of such rates. The result will be serious injury to us, while the public will be deprived of the railway facilities and the choice of routes which they now enjoy. If the two canal companies remain independent, they may be trusted not to reduce rates below a remunerative point, but when they are amalgamated they may reduce rates between particular points for the purpose of putting a pressure upon the Midland company. We already have a line to the promoters' docks at Gloucester, and shall shortly have a line communicating with their new docks at Sharpness; but in the event of the proposed amalgamation, it will be the interest of the promoters to send traffic by water between both these points and Birmingham and other places in the Midland counties, instead of by railway, for the water communication all the way will be in their own hands. A large proportion of our traffic may thus be diverted as effectually as though the promoters were a competing railway.

Clerk, Q.C. (for Great Western company): In the House of Lords our *locus standi* was admitted, and as far as it affects our interests, the bill is identically the same as it was in the House of Lords. The Gloucester and Berkeley company, though called a canal company, are to all intents and purposes a dock company, having, both at Sharpness and Gloucester, very extensive docks with which railways communicate, and there being a canal communication from the one system of docks to the other. At present it is a matter of indifference to them whether ships discharging at Sharpness or Gloucester have their goods conveyed by the Midland or Great Western railways from either point. The effect of the bill, however, would be to make it the interest of the canal company to take all traffic from Sharpness or Gloucester by water, *vid* the Severn navigation, and the Worcester and Birmingham canal, to Birmingham, so creating not merely an improvement of route, but new competition, which would entirely exclude other means of conveyance; their interest would then be to take the entire traffic by water. The mere fact that we own the Stratford-on-Avon canal, which communicates with the Worcester and Birmingham canal, would give us a *locus standi* against a bill for amalgamating the Gloucester and Berkeley canal with the Worcester and Birmingham canal, which is our only water communication either with Worcester or with Birmingham except by a very circuitous route. Under the Canal Carriers' Act of 1845, any

canal company may become carriers, but the Severn navigation being a public body could not become carriers. Accordingly, clause 49 of the bill provides that section 7 of the Act of 1845, enabling canal companies to become carriers, shall apply to the Severn navigation, thereby enabling the Severn commissioners to make a through rate with the Gloucester and Berkeley canal. As a matter of fact we are not at Sharpness at this moment, because the Midland railway, over which Parliament has given us running powers to Sharpness, is not yet made, but we shall be there shortly.

Granville Somerset (in reply): Since 1845 we have had power to become carriers whenever it suited us to do so. We want no Act to enable us to exercise these powers, nor does this bill propose that we should become carriers or enable us to buy boats. When the Midland line is completed to our new docks at Sharpness, goods unloaded from vessels there may be sent either by water or by the Midland or Great Western railways to Birmingham and other places. That is exactly what happens now at Gloucester. The bill will introduce no change in this respect. The only difference will be that, if traders choose the water route, they will pay one toll instead of three, levied at present by the Gloucester and Berkeley company, the Severn navigation, and the Worcester and Birmingham canal company; the fact being that the latter company are now in Chancery and cannot keep open the navigation, whereas we shall keep it in an efficient state. Thus, what is proposed is merely the improvement of an existing route, which gives no right to a *locus standi* on the ground of competition. (*Severn Tunnel Railway Bill*, 2 *Cliff. & Steph.* 244; *River Weaver Navigation*, *Ib.* 239.) It will not be our interest either to obstruct or divert the traffic of the Stratford-on-Avon canal. On the contrary, it must clearly be our interest to take all the traffic to and from that canal upon our own water system. It is also our duty to do so, and this duty may be enforced. As to the Severn commissioners, upon which the Great Western are represented, they will only join in making a through rate, if they think it for their own advantage to do so, and their revenue will thereby be increased instead of diminished. The Midland company allege that, as the consideration we pay for the Worcester canal does not represent the cost, we may reduce the rates for goods on that canal to an unremunerative point in order to compete with them. But as the Worcester canal has for some years paid no dividend, it is impossible to contend that the original outlay is any test of its present value. This, however, is a matter which cannot concern the Midland company who, if entitled to be heard, can only be heard upon the ground of competition. As to the West Suburban railway, that company are still in existence, and they, if anybody, should petition on their own behalf. In the agreement between the Worcester canal and the Suburban railway companies, which was scheduled to the Act of 1871, the railway company bound themselves not to apply to Parliament for relief from the restrictions put upon them as to traffic, except with the consent of the canal company. When the Midland railway company agreed to

work the Suburban railway they took it subject to these restrictions and conditions, knowing perfectly what these were, yet they now seek such relief without the consent of the canal company, because the restrictions are inconvenient to them.

Locus standi of both Petitioners Allowed.

Agents for Midland Railway Company, *Beale, Marigold & Beale*.

Agents for Great Western Railway Company, *Young, Maples & Co.*

Petition of (3) *HENRY ALLSOPP, Esq., M.P.*

Canal—Amalgamation—Tolls and Rates—Landowners adjoining Canal, Statutory Exemptions in favour of—Lock-weirs—Height of Water in Canal—Conditional Exemption from Tolls, how far Illusory—Grievance resulting—Past Legislation—Saving Clause inadequate—Technical Locus—Amalgamation Bills—Practice as to—Revision of previous Legislation—Intentions of Legislature Frustrated—Injurious Affecting.

By a section in their Act of 1815, a canal company were bound to allow owners of lands adjoining the canal to bring road materials and manure along the canal free from toll, provided the cargoes so exempted passed through the company's locks at such times only as "the water shall flow over the lock-weir." A bill to vest this canal in another company was opposed by one of the landowners entitled to this exemption on the ground that, as the overflow depended on the height of water in the canal, and as the existing canal Acts contained no provision for regulating the height of the water, the company, by keeping the water low, could always destroy the exemption, and had in fact on certain specified occasions refused to give effect to it. The petitioner contended that, though the bill professed to make no change in his rights in this respect, he was entitled, this being an amalgamation bill, to urge before the Committee that the privilege given to him and other landowners by the Act of 1815 should now be made effective instead of remaining illusory:

Held, that as the bill did not propose to make the petitioner's position worse, he could not be heard against a grievance brought about by past legislation; but the *locus standi* of the petitioner was allowed against the toll

clauses of the bill on the technical ground that they were not so worded as sufficiently to preserve the existing exemption.

(*Per Cur.*) The ground upon which petitioners are let in to oppose amalgamation bills is because the amalgamation itself will, or may, injuriously affect them, and not merely because they have a grievance resulting from past legislation.

Section 61 of the Worcester and Birmingham Canal Navigation Act, 1815, provided that no paving stones, gravel, sand, or other materials for making and repairing of roads situate in any of the parishes through which the canal passed, nor any dung, soil, marl, or other manure (lime and limestone excepted) for the improvement only of the lands or grounds in any parish or place through which the canal passed, belonging to any owners of lands adjoining the canal, should be charged with or liable to the payment of any of the authorised rates, but should be freed or exempted from the same, provided the matters or things so exempted did not pass through any lock "except at such times when the water shall flow over the lock-weir."

The petitioner alleged that he was a landowner entitled to the exemption, but that during the winter months of 1872-3 the canal company had charged him 10s. per boat-load for manure coming from Birmingham along the canal to his property at Hindlip. He further alleged that, as the company's Acts contained no provision for regulating the height of the water between the several lock-weirs, while it was upon the height of the water that the overflow depended, they might keep the water at any level they thought fit, consistently with maintaining the navigation, and so might wholly deprive the landowners of their rights and privileges. He claimed to be heard before the Committee in order to insert clauses by which these rights and privileges should be made effectual, and further complained of the tolls proposed to be charged under the bill, in the case of the privileged landowners, though these tolls were less than the company were now authorised to charge to persons not possessing the privilege.

The *locus standi* of Mr. Allsopp was objected to, because (1) no land, &c., of his will be taken or interfered with; (2) his present position is in no way altered by the bill; (3) whatever privileges or exemptions he is now entitled to are preserved by the bill; (4) the Worcester and Birmingham Canal Acts contain stringent provisions respecting the level of the water in certain reservoirs and feeders of the canal and the supply of water to certain mills, and it cannot be shown that the water in the canal has been intentionally kept at a low level for the purpose of depriving landowners of their rights and privileges; (5) the bill contains no power to impose a toll or to make a charge in respect of traffic at present exempted therefrom, nor does it propose to abolish any such privilege or exemption; (6) not only are all the petitioner's

privileges under existing Acts preserved and maintained by the bill, but the bill imposes an additional obligation on the promoters as to keeping the Worcester and Birmingham canal well and sufficiently supplied with water, and provides a remedy in case of default; (7) the petitioner alleges no grievance upon which he can be heard according to practice.

Thomas (for petitioner): We say it would be unjust if this bill passed without provisions to confirm and maintain our privileges under the Act of 1815, and to regulate, if necessary, the height of the water in the canal, so that the company may not be able, by lowering the level of the water, to evade their liabilities and deprive the landowners and their tenants of their statutory rights.

The CHAIRMAN: Do you say that your position will be made worse under the present bill?

Thomas: It will be affected by the bill. We ask for two things—first, for an effectual saving clause; secondly, that the exemption shall be an effective one instead of, as now, an illusory one, enjoyed at the option of the company.

Mr. RICKARDS: In lieu of this illusory privilege you demand a valid and effectual privilege? You want your position to be made better?

Thomas: Yes; and we also ask to be heard in order that it shall not be made worse.

Mr. RICKARDS: How will it be made worse?

Thomas: The old provision is not secured.

Mr. RICKARDS: The old provision seems to be good for little, if anything, according to your statement. It comes to this—if the company wish to take the privilege away from you, they can do so.

Thomas: Yes; but assuming that our privilege under the Act of 1815 is found in practice to be illusory, I submit that we are entitled now to have it made effective. If we are not heard now, when the whole property is being transferred, we shall never have the opportunity. When promoters come here to sell or amalgamate their undertaking, it has always been the practice of Parliament to allow petitioners interested in the subject matter of the transfer or amalgamation to ventilate their grievances. The promoters say in the preamble:—"It is expedient that the Company's Acts be in divers respects extended and amended." That is our case too; and if ever legislation required revision it is in this case, when the intentions of the Legislature in favour of these landowners have been frustrated.

Mr. RICKARDS: The foundation of all *locus standi* is that the bill will in some way injuriously affect the interests of the party claiming to be heard. It is not because petitioners think they have a grievance under existing legislation, whether upon tolls or any other matters, that they are to be heard against a bill.

Thomas: I admit that that is so upon all bills except amalgamation bills. Upon these, Parliament lets in people having a grievance though they would not be heard against a bill brought in by the same company for some specific object other than amalgamation.

Mr. RICKARDS: The ground upon which people are let in to oppose amalgamation bills, is that the amalgamation will in itself produce some

grievance, or may do so. It is not because people allege a grievance resulting from past legislation that they have a right to be heard, but because the effect of the amalgamation may be to injure them.

Thomas: Then in no case can a grievance caused by existing legislation be brought before the notice of Parliament.

The CHAIRMAN: Am I right in assuming that the bill does not affect in any way the right of the landowners to bring their manure along the canal toll-free?

Thomas: Technically the right is affected, because, even if the promoters pretend to save it, the machinery by which they propose to do so is defective. Clause 41 repeals the old tolls, and in the two following clauses new tolls are enacted, but there is no exemption clause, and it is for the promoters to show that they do exempt us. We say that the promoters ought to put in an indisputable exemption, applying to the new tolls in the same way as the old exemption applied to the old tolls.

The CHAIRMAN (to *Somerset*): You need not address us upon the point taken for the petitioners—that they have a right to ask the Committee to provide in the bill against the evasion by the company of the privilege given under the Act of 1815. We are of opinion that upon this point the petitioners have not made out a case for a *locus standi*. But as this is an amalgamation bill, we will hear you with reference to the other question—whether or no your bill sufficiently maintains the exemption of the petitioner and other landowners, namely, the right to carry toll-free the goods specified in section 61 of the Act of 1815 at certain times, that is, when the water is going over the weir.

Granville Somerset, Q.C. (for promoters), was then heard to contend that the existing exemption was saved under the bill, and that the toll clauses (41-3) did not vary any exemption, express or implied, contained in the Act of 1815.

The CHAIRMAN: The *locus standi* of Mr. Alsopp is *Allowed* against the toll clauses—41 to 43.

Agents for Petitioner, *Baxters & Co.*

Agent for Bill, *W. Bell.*

GREAT EASTERN RAILWAY BILL.

Petition of (1) THE METROPOLITAN DISTRICT RAILWAY COMPANY.

6th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Interchange of Traffic—Running Powers—Existing Agreement—Obstruction of Line by Additional Traffic—Power to make General Agreements—Practice—Apprehended Alteration in Bill—Opposition to Clauses before Committee—Locus not Granted against Prospective

Alteration—Filled-up Bill—Locus Standi not limited to part of Clause—Right of petitioning against new matter in Bill—S. O. 131.

The Great Eastern sought power by clause 53 of the bill to interchange traffic with the Metropolitan railway company. The Metropolitan district company petitioned on the ground that, as they enjoyed running powers over the lines and use of stations, &c., of the Metropolitan company, the admission of the Great Eastern to similar privileges would injure them by obstructing traffic on the Metropolitan line, which was already crowded. The promoters replied that, under an agreement appended to a former Act, they already possessed running powers over the Metropolitan line, though such powers were hitherto unused; that clause 53 was merely inserted to secure an interchange of traffic not provided for in that Act, and that the bill could not alter for the worse the present position of the petitioners. Clause 53, however, authorised the respective companies to make from time to time such general agreements as might be beneficial to their undertakings, and the petitioners alleged that, under this general and indefinite power, their traffic on the Metropolitan line might also be obstructed and inconvenienced:

Held, That they were entitled to a *locus standi* against the clause.

(*Per Cur.*) The *locus standi* of petitioners depends upon the terms of the original bill, not upon possible amendments in the filled-up bill. The Court cannot give a *locus standi* against a prospective alteration. Great difficulties exist in limiting a *locus standi* to part of a clause. If petitioners establish *prima facie* grounds for a hearing against part of a clause, the Court feels bound to give them a *locus standi* against the whole clause.

The *locus standi* of the petitioners was objected to, because (1) their railway and land are not interfered with; (2) they are not the owners of the Metropolitan railway, with which the promoters seek to enter into traffic arrangements, and the petitioners have no powers or interests in connection with that railway, except powers of user exercised in common with other railway companies; (3) the powers of the petitioners upon the Metropolitan railway do not entitle them to exclude other traffic therefrom,

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any lessons learned for future projects.

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS
WASHINGTON, D. C. 20540

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS 60637
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

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U.S. DEPARTMENT OF JUSTICE
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"I will continue to work hard to improve my skills and to contribute to the success of the company."

The Chairman: We are going to discuss
whether a jury should represent part of a court.
Mr. Barker can continue and say part of
court will select him. We shall then
have him a jury should represent the whole of

Answer. Under the general authority
granted by the State Legislature, various
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 5. *What are the conclusions of the study?*
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The following table shows the results of the regression analysis for the dependent variable "Number of children in the household" (N = 1,000). The table is organized into three columns: "Variable", "Coefficient", and "Standard Error". The variables are listed in the first column, and the corresponding coefficient and standard error are listed in the second and third columns, respectively. The table is organized into three rows, with the first row showing the overall mean, the second row showing the coefficient for the variable "Number of children in the household", and the third row showing the standard error for the variable "Number of children in the household".

| Variable | Coefficient | Standard Error |
|-------------------------------------|-------------|----------------|
| Overall mean | 1.000 | 0.000 |
| Number of children in the household | 0.000 | 0.000 |
| Standard error | 0.000 | 0.000 |

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1. The first step is to identify the problem. This involves understanding the current situation and what needs to be changed.

THE FOLLOWING ARE OTHER ITEMS OF INTERESTING VALUE AND I AM SURE TO BE ABLE TO OBTAIN - IN THE FUTURE - FURTHER INFORMATION OF INTEREST TO YOU. I AM SURE TO BE ABLE TO OBTAIN - IN THE FUTURE - FURTHER INFORMATION OF INTEREST TO YOU.

Held, that while all the points raised in the petition, including the question of commonable rights, could be raised in Committee through the landowners, the *locus standi* of the other petitioners must be formally disallowed, the practice being to enter in the votes, not the allowance, but the disallowance of the *locus standi*, or any limitation of it.

The *locus standi* of the petitioners was objected to, because (1), excepting Enoch Fenton and C. M. Ridley, none of them are owners, leasees, or occupiers of land or buildings, subject to the compulsory powers of purchase sought by the bill; (2) a *locus standi* cannot be given in respect of the petitioners' commonable rights; (3) even if such rights conferred a *locus standi* in Parliament, such *locus standi* must be given to the body of persons entitled thereto and not to individuals, and the petitioners are not sufficient in number to represent the body; (4) the proposed railway will not diminish the area over which the commonable rights extend so as to leave an insufficient area for the exercise of such rights; (5 and 6) the bill will not prejudice any pending suit, and the petitioners are not entitled to be heard consistently with practice.

Cripps, Q.C. (for petitioners): The objections admit the *locus standi* of Mr. Fenton and Mr. Ridley. I can, therefore, raise through them any question raised in the petition as to commonable rights, but I do not admit that the other petitioners have no right to a hearing.

Mr. RICKARDS: We must give a *locus standi* to Mr. Fenton and Mr. Ridley.

Saunders: Not in respect of their commonable rights?

Mr. RICKARDS: They have a general *locus standi*, being landowners.

The CHAIRMAN: The *locus standi* of Enoch Fenton and C. M. Ridley will be allowed; that of the others will be disallowed; it being understood that the questions raised in the petition by persons who have commonable rights can be raised by Mr. Fenton and Mr. Ridley.

Cripps: I do not bring the case of the other petitioners before you for a decision; their case has not been argued.

Mr. RICKARDS: According to practice the disallowance, not the allowance, is entered in the votes.

Cripps: I must submit to that decision as a common form.

Locus standi of Petitioners Disallowed, except Enoch Fenton and C. M. Ridley.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

GREAT NORTHERN RAILWAY (FURTHER POWERS) BILL.

Petition of WILLIAM GREAVES.

11th May, 1874.—(Before Mr. H. C. BAIKES, M.P., Chairman of Ways and Means, in the Chair; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Railway—Abandonment—Substituted Line—Line Projected ultra vires—Afterwards by Bill—Landowners—Repeal of Provisions for Compensating—Alteration in Status—Nuisance from proximity of Shunting Station—Remedy by Injunction, destroyed by Statutory Powers—Property injuriously affected—Property not Taken—Petition—Traverse of Allegations in, how far necessary.

This was a bill empowering the Great Northern company to substitute a new line of railway for one authorised in 1872, but not proceeded with. The company had proposed to construct this substituted line in 1873 without statutory powers on land acquired by them for the purpose, but, after proceedings in Chancery, they abandoned the intention, and now promoted a bill in the usual way. It was opposed by a landowner, who alleged that his status was thereby altered, inasmuch as if the railway of 1872 had been constructed, he would have been entitled to compensation as a landowner whose lands were taken, or, on the other hand, to compensation failing the completion of the railway within the prescribed period. The new line, although avoiding his property, would pass much nearer his house than the original line; and the petitioner urged that, had the company proceeded with their scheme in 1873, without the statutory powers they now sought, he would have had a legal remedy for the nuisance created by the connection of the new line with a shunting station near his property; whereas the bill, if passed, would deprive him of this remedy. For the promoters it was contended that the abandonment of the line, authorised in 1872, was to the petitioner's advantage as a landowner, and he therefore could not be heard against an abandonment bill. As to the new line, it was contended that, his land not being touched or taken, he could not be heard against it, and still less against possible nuisance arising from proximity to the shunting station, which was not mentioned in the bill:

Held, that the petitioner was not entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) he complains of the abandonment of a portion of railway authorised in 1872 (No. 1) which did touch his property, and the substitution of a railway (No. 4) which will not touch his property, but this gives him no right to be heard; (2) the alleged difference between clauses 18 and 19 of the bill, and clauses 19 and 20 of the Act of 1872, does not alter his legal status, is not accurately stated, and he cannot be heard on this matter; (3) there are no other allegations giving him a right to be heard.

Pembroke Stephens (for petitioner): In 1872 the Great Northern railway obtained an Act authorising railway No. 1, which was to traverse our land, and to be completed in five years. Clauses 19 and 20 of this Act provided that if railway No. 1 were not completed within five years the Great Northern should pay a penalty of £50 a day for a certain period, and this penalty was to be applied, amongst other things, towards compensating landowners who had been subjected to injury or loss in consequence of the compulsory powers conferred upon the company by the Act. In 1878 we learnt that the promoters intended to alter the course of railway No. 1 in such a way that it would be constructed on land acquired by them, and would no longer touch our property, though it would shave it as closely as possible. This substituted line would, in fact, be nearer to Mr. Greaves's house than the original line; the lands acquired by the company being only 11 yards distant from the house. This substituted line would, moreover, be connected with a large shunting station 70 acres in extent, which, we believe, is to be used by various railway companies for mineral traffic. As the substituted line would be made upon land belonging to the company, and not under statutory powers, the company found, as the result of proceedings in Chancery, that they would be liable to injunction, at the suit of neighbouring landowners, for any nuisance that might be created by the working of the line, and thus we should have had a legal remedy for nuisance or injury to our residential property. Now, however, the company come for statutory powers to make a railway (No. 4) which is identical with the one they sought to make in 1873 *ultra vires*, and so we shall be deprived of any remedy by injunction. Our legal status is therefore altered, both as regards our position in 1872 and 1873. If railway No. 1, authorised by the Act of 1872, had been proceeded with, we should have been entitled to compensation under that Act, whether it had been completed or not, for if railway No. 1 had been completed, our lands must have been taken, and we should have received the ordinary landowner's compensation, while, if the line had not been completed within the prescribed time, we should have been entitled to compensation under clauses 19 and 20 of that Act. If, on the other hand, the scheme of 1873 had been carried out *ultra vires*, we should have had a right

to an injunction to prevent any nuisance caused by the line in connection with the shunting station. Under this bill we lose all these advantages. As the promoters in their objections do not say anything about the shunting station, we are entitled to take as admitted everything stated in the petition about it. (*Coleford Railway Bill*, 2 Cliff. and Steph. 278.)

Mr. RICKARDS: Is the shunting station to be made under the present bill?

Stephens: The line authorised by the bill runs from the main line of the Great Northern to land taken, but not under the bill, for the shunting station; and the traffic from one point to the other will pass within 11 yards of the petitioner's house. Physical interference with property is not necessary, as shown by the *Gunpowder* case (1 Cliff. and Steph., test, 40); and with respect to gas-works, the Standing Orders require that notice shall be given to all persons within a certain distance. Here the nuisance created by the shunting station would be quite as great as that caused in either of those cases. If this bill were passed, the petitioner would, on the principle decided in *Brand v. Hammersmith Railway* (ante, p. 47), be deprived of his right of action on the ground of nuisance. The *East Gloucestershire* case (*May's Parliamentary Practice*, 7th Edition, 744) is in point here. In the *Metropolitan and St. John's Wood Railway Bill* (2 Cliff. and Steph. 190), owners and occupiers were heard whose property was not physically touched. It may be said that the petitioners were heard in that case because of a clause in a former Act; but the same point arises here. Provisions in the Act of 1872 will be revoked by this bill, because clauses 18 and 19 of the bill diminish the protection given to landowners by sections 19 and 20 of the Act, and expressly limit compensation to any damage occasioned by the entry of the company on land, or its temporary occupation. This is not an ordinary abandonment bill, but either a new bill, or a repeal of the old Act and a substitution of new provisions, in either of which cases we are entitled to be heard.

Pember, Q.C. (for promoters): The petitioner is trying to compel the company to make a line across his lands. As has been said by this Court, *prima facie*, the making of a railway is an injury to a landowner, and the abandonment of it an advantage, and, therefore, he is not entitled to be heard against an abandonment. Clauses 19 and 20 of the Act of 1872 refer to landowners affected by that Act, and clauses 18 and 19 of the bill to landowners affected by it. If the petitioner comes under the category of landowners enumerated in the clauses of the Act of 1872, he will still be entitled to compensation under those clauses. Clauses 18 and 19 of the bill have nothing whatever to do with that question. The bill provides for a new state of things under which the petitioner's land will not be interfered with, and under which the clauses in the Act of 1872 are not required. He will be in the same condition as he was before the Act of 1872; his land has received no injury from the existence of the compulsory powers; and he is now a landowner whose land is not touched. If he comes under the clauses of the Bill, he will get compen-

sation just as he would under the clauses of the Act of 1872. If he has suffered any injury from having been in a state of uncertainty since 1872, clauses 18 and 19 of the bill and the Lands' Clauses Consolidation Act provide him a remedy. We are now going to construct a line against which, if we had proposed it in 1872, the petitioner could not have appeared, because his land is not touched. *The St. John's Wood and Metropolitan Railway* case is in my favour, as that involved the repeal of a restriction upon carrying heavy goods' traffic. I refer also to *Cheshire Lines Committee Bill* (2 Cliff. & Steph. 246,) and *Salford Borough Drainage Improvement Bill* (Ib. 132). In some cases landowners may have been heard whose land was not touched, but it has been because, as in the *Gunpowder* case, there was absolute danger of physical destruction. As to the contention that all allegations in the petition which we do not traverse may be taken as admitted, it is enough if the promoters traverse all matters which are vital to the case of the petitioner, without traversing every word of his case. Points of detail are covered by a general objection. As the Vice-Chancellor said in his judgment, the real object of the suit instituted by the petitioner is not to protect his house, but to obtain the payment of a sum of money. This is no doubt his object still.

Locus standi Disallowed.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Dorington & Co.*

GREAT WESTERN RAILWAY BILL.

Petition of DEBENTURE HOLDERS OF THE AYLESBURY AND BUCKINGHAM RAILWAY COMPANY.

16th April, 1874.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies—Working Powers—Power to Purchase Railway—Exchange of Preference Stock in Purchasing Company for Ordinary Stock in Line to be bought—Debenture Holders—Distinct Interests—Shareholders—Impaired Security—Alleged change in Status—Protection under General Act—Railways Clauses Act, 1863, Section 40.

The bill proposed, *inter alia*, to authorise the Great Western and the Aylesbury and Buckingham railway companies to enter into and carry into effect arrangements for the working, use, and maintenance by the Great Western of the Aylesbury and Buckingham line, and further provided that the Great Western company, with the previous consent of three-fourths of the shareholders in the respective

companies, might issue Great Western consolidated preference stock to every holder of ordinary shares in the Aylesbury company in lieu of those shares. The bill was opposed by debenture holders in the Aylesbury company on the ground that it placed the future of this line entirely in the disposition of the shareholders, who might make any arrangements they thought fit for its working by the Great Western, and even hand it over to that company altogether; and the petitioners urged that if the shareholders made a bad bargain, the security of the debentures would be impaired. It was answered that the interests of shareholders were practically identical with those of debenture holders, and that if the two companies were amalgamated, the Aylesbury debenture holders would be adequately protected by the Railways Clauses Act, 1863, section 40, which would make the security of such debenture holders as good as that of Great Western debenture holders:

Held, that, as under the bill the rights of the petitioners would remain substantially unimpaired, they were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the bill does not affect their rights, property, or interests in such a way as entitles them to be heard; (2) they are not entitled to be heard according to practice, either as debenture holders or creditors; (3) the petition discloses no ground for a hearing.

Gale, Parliamentary Agent (for petitioners): I represent two-thirds of the debenture holders of the Aylesbury and Buckingham railway, who say that on this question their interests are distinct from those of ordinary shareholders. Under the bill the Great Western may not only work the Aylesbury line, but may, with the consent of three-fourths of their own and the Aylesbury shareholders, present at some general meeting, issue to every holder of ordinary shares in the Aylesbury company, in lieu of such shares, Great Western consolidated preference stock "bearing interest at the rate of £5 per cent. per annum to an amount not exceeding £10 per cent. of the amount paid up upon the shares of the Aylesbury company;" that is, the Aylesbury shareholders will receive £10 for every £100 paid by them. Now the Aylesbury and Buckingham railway is at present not being worked at all; but it has been worked for a time by the Great Western company, and may hereafter become profitable; but this clause shows what terms the shareholders would be willing to accept. Under the bill it will be in the power of shareholders to hand over their undertaking to the Great Western for a mere nothing. This

would impair our security, and alter our condition for the worse.

Mr. RICKARDS: Does not the bill deal with the debts and liabilities of the Aylesbury company?

Gale: Only if the Great Western take over the undertaking wholly. We object to the shareholders having the power of making whatever working arrangements and whatever terms they like with the Great Western. Judgment creditors and preference shareholders have been allowed a *locus standi* in other cases, as having a separate interest. (*Caledonian Railway Bill*, *Petition of Messrs. Baird*, 1 Cliff & Steph. 163; *Crystal Palace Railway Bill*, *Petition of C. Barry and W. Garland*, *Ib.* 165; *Maryport Improvement and Harbour Bill*, *Ib.* 166.)

Rodwell, Q.C. (for promoters): It is not to be presumed that the shareholders will make a bad bargain when they can derive no profit themselves until the debenture holders have been first satisfied. They must, therefore, make arrangements consistent with the true interests of the company. They wish to establish friendly relations with the Great Western, and directly they do so the debenture holders will be placed in a better position. The case of the *Brecon and Merthyr Tydvil Railway Bill* (Smeth. 138) is directly in point. There is nothing in this bill to disturb the debenture holders in their rights, because in the event of the amalgamation of the two companies, section 40 of the Railways Clauses Act, 1863, applies, and all the debts and liabilities of the dissolved company must be met by the amalgamating company. In that case, therefore, Aylesbury debenture holders would get as good a security as Great Western debenture holders. In the cited cases there was something to distinguish the interests of debenture holders from those of shareholders. Here there is no such distinction. (*Lynn and Sutton Bridge, &c., Bill*, Smeth. 162.)

Locus standi Disallowed.

Agents for Bill, Sherwood & Co.

Agent for Petitioners, Gale.

HARROW, EDGWARE, AND LONDON RAILWAY BILL.

Petition of (1) THOMAS JOHN HUGHES AND OTHERS; AND (2) JOHN W. FIGG, AND H. J. BLACKHAND.

13th May, 1874—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Railway—Abandonment Bill—Landowners—Deposit Money—Previous Act—Extension of Time Bill—Costs incurred in Opposing—Private Bills Costs' Act, 1865—Reimbursement of Costs of previous Opposition.

A bill to authorise the abandonment of a railway was opposed by landowners who sought to recover costs incurred by them during the previous session in opposing an unsuccessful bill extending the statutory period for the construction of the railway. The object of the promoters by the present Bill was, in fact, to get back their deposit money, while the petitioners desired to defray their costs out of this deposit under cover of a clause in the original Act for the protection of landowners "who may have been subjected to injury or loss in consequence of the compulsory powers" given to the company:

Held, that the petitioners did not show any injury which gave them a Parliamentary right to be heard.

The *locus standi* of both sets of petitioners was objected to, because: 1. that the statements contained in their petition against a bill of the promoters in 1873 and made no allegations against the promoters; 2. they only seek to have a clause inserted in the pending bill to provide for the payment of costs alleged to have been incurred in opposing the bill of 1873, while under the company are not bound by any order of Parliament or any Judicial Tribunal to pay; 3. they are not entitled to a hearing respecting the matter.

Prentice (for all the petitioners): The petitions are alike and may be taken together. In 1869 an Act passed for the making of the Harrow, Edgware, and London railway, and in 1873, the powers of the promoters being about to expire, they introduced a bill to extend the time for the purchase of land and carrying out the works. We presented a petition against this bill objecting to the extension of time, and the bill was in consequence withdrawn. Now they ask to be allowed to abandon the railway altogether, and to recover and carry out an deposit, amounting to £2,250. But section 26 of the Act of 1869 provided that the deposit should be applicable after due notice towards compensating any landowner or other person whose property may have been interfered with or rendered less valuable by the commencement, construction, or abandonment of the railway, "or who may have been subjected to injury or loss in consequence of the compulsory power of taking property conferred by the Act," and for which no compensation shall have been paid, &c. As landowners answering this description, we are equitably entitled to a portion of this deposit money, to be applied towards the costs which we incurred in opposing the bill of 1873.

The CHAIRMAN: The petitioners' lands have not been taken under the compulsory powers of the Act, nor do they claim in respect of injury sustained by them as landowners, but in respect of the expense they were put to in opposing the

bill of 1873. Even if we allow you a *locus standi*, the Committee would not be able to give you a clause such as you ask for, because under the Costs' Act of 1865 the Committee could not award you costs incurred by you in opposing a prior bill, which was withdrawn.

Mr. RICKARDS: We cannot give a *locus standi* to a party who asks merely that he may have an opportunity of requesting the Committee to confer a pecuniary benefit on him. The question is, whether the bill inflicts any injury upon him. Your case is at best only that you incurred these costs in consequence of a bill introduced into Parliament extending the time during which the petitioners' property could be compulsorily taken.

Prentice: My contention is, that the petitioners incurred these costs, in the words of section 29 in the Act of 1869, by reason of the promoters' compulsory powers. That being so, there would be nothing to prevent the Committee from inserting a clause in the bill giving us our costs. If the promoters had applied to the Board of Trade for a certificate of abandonment under the old law, this deposit would have been treated as assets of the company.

Mr. RICKARDS: In that case what claim would you have against the assets?

Prentice: Legally, we should have none, I admit, because our costs incurred in 1873 are not a debt, liability, or engagement of the company. We are here precisely because we have no legal remedy.

The CHAIRMAN: Having no legal remedy you ask to go before a Committee to secure one.

Shrubsole, Parliamentary Agent (for promoters), was not called on.

Locus standi Disallowed.

Agents for Bill, Dyson & Co.

Agent for Petitioners, J. Webb.

IPSWICH AND FELIXSTOW RAILWAY AND PIER BILL.

Petition of JOHN WESTON.

6th May, 1874.—(Before Mr. BRISTOWE, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Replacing Tramway—Identical Routes—Competition—Prior Interests—Provisional Orders—Powers under—Single Petitioner—Joint “Undertakers”—Separate Interests of—Agreements between—Same Lands required for two Undertakings—Landowner—Unexecuted Agreement—Contracts to Purchase, in writing and verbally—How regarded by Court—Pier, connected with Railway and Tramway.

A bill authorising the construction of a railway in connection with, but not touching a pier, was opposed by one of two “undertakers”

named in the Provisional Orders granted in the previous session by the Board of Trade for the construction of that pier and of a tramway, for which the proposed railway would in fact, though not in name, become substituted, the same lands being required at the point of intersection for both undertakings. It was objected that, as only powers of taking lands by agreement were given by the Provisional Orders, the pier and tramway undertakings must fail, being mainly upon the lands of an unwilling landowner, Colonel T.; and that, in any case, the petitioner, being but one of the undertakers, could not be heard singly. The petitioner, however, produced letters written by his co-undertaker, Colonel T., for the satisfaction of the Board of Trade, before the Provisional Orders were granted, expressing his willingness to sell to the petitioner the lands required for the tramway and pier at a specified price:

Held, that the petitioner was entitled to be heard, notwithstanding that “guarantees,” forming the condition on which Colonel T. had been willing to sell, were alleged not to have been afforded.

Where a petitioner sought to establish an interest in lands, proposed by a bill to be taken compulsorily, on the ground that he had agreed for their purchase, but it was stated that the agreement, though in preparation by the solicitor, was not yet signed:

Held, that for the purposes of a landowner's *locus standi*, an unexecuted agreement for purchase is insufficient, and that the Court cannot recognize anything but a binding contract.

This was a bill “for making railways from the Westerfield station of the Great Eastern railway to Walton and Felixstow.”

The petitioner, in conjunction with Colonel Tomline, of Orwell Park, had obtained from the Board of Trade, in the previous session of Parliament, Provisional Orders authorising the construction of tramways—one of which, from Ipswich to Felixstow, followed a course very similar to that of the railway now proposed—and also a Provisional Order for the construction of a pier at Felixstow. Colonel Tomline, upon whose property mainly these works were to be constructed, had expressed in writing his willingness to sell to Mr. Weston the lands required, coupled, however, it was alleged, with conditions which had not been complied with. Matters had advanced a certain length, and a sum of £2,285 had been deposited in the Court of Chancery, when disagreements arose, the further

carrying out of the Provisional Orders was interrupted, and conflicting views were now taken of their rights under those Orders by the persons named in them as "undertakers." The line of the railway as proposed would cross the tramway, and the taking of lands at the point of intersection would seriously interfere with, if not defeat, the rival scheme. Colonel Tomline's name did not appear in the bill, but it was suggested that he had become an active supporter of the railway scheme. Power was taken in the bill to agree with the promoters of the pier Order for the purchase of that undertaking. The railway came up to the pier, but did not touch it.

The *locus standi* of Mr. Weston was objected to, because (1) the Provisional Orders of 1873 were not altered or affected by the bill, and the "promoters" or "undertakers" named in them would consequently have no *locus*, even if they petitioned jointly; (2) no powers were granted by those Provisional Orders to Mr. Weston singly, and if he individually had entered into contracts in respect of them he had exceeded his authority; (3) no lands in possession of the petitioner, or in which he was otherwise interested, would be taken by the bill; (4) the Provisional Orders only authorised the acquisition of lands by agreement, and for that reason it was impracticable now to carry out the undertakings; (5) the petitioner had assigned what purported to be his rights under the Provisional Orders, and his assignees did not join in the petition; (6) no sufficient competition was shown according to practice; (7) and (8) the petitioner alleged no sufficient interest.

Shiress Will (for petitioner): Steps are being taken to carry out the tramway works, which will be ruined if the railway is authorised; the terminal points are the same, the course nearly identical, and admittedly both cannot exist together as commercial undertakings. Mr. Weston has not assigned his rights, but has merely entered into a conditional agreement for registering a company. Before the Provisional Orders were sanctioned, it was requisite to satisfy the Board of Trade that the land could be obtained, and Colonel Tomline furnished Mr. Weston with a letter in which he said:—

"I agree to sell you for the purpose of constructing this tramway so much of my land over which it passes, as may be necessary for that purpose, at the price of £10 an acre."

A letter, in similar terms, was written by him as to the land required for the pier. Mr. Weston has further agreed to purchase, from another landowner, lands over which this railway will pass; but in that case, though the solicitor is preparing it, the agreement is not yet signed.

Mr. RICKARDS: Upon the claim of a landowner's *locus*, we cannot recognise anything but a binding contract.

Will: Then I rely on the fact as evidence of our intention to carry out the undertaking. There is no difficulty in doing so, save that Colonel Tomline withholds his consent.

Mr. RICKARDS: The *Maryport District and Harbour Bill* (1 *Cliff. & Steph.* 4) has a bearing on this case.

Pembroke Stephens (for promoters): It has not

been shown that the bill would injure the "undertakers" jointly; and if they have no right to be heard together, how can they claim a *locus* singly? There is nothing in the bill to alter their legal status, or affect any agreement into which they may have entered, and no powers were ever granted to Mr. Weston individually. As to the tramway, unless he has got, legally or equitably, possession of the whole of the lands required, it cannot now be made; and Colonel Tomline expressly stipulated in his letter "that sufficient and satisfactory guarantees be provided to secure the carrying out of the above arrangements," which guarantees have never been affixed. This excuses his action. The granting of a Provisional Order implies that the matter is to be carried out by agreement; and in this case "all estate, right, title, &c.," of Colonel Tomline were further expressly saved by the Order itself. The *Maryport* case was one of joint-tenancy, which is distinguishable from joint-promotion.

The CHAIRMAN: The petitioner alleges that under the bill certain lands will be interfered with, which the undertakers it seems can at any moment call on Colonel Tomline to sell them.

Stephens: Till the land is theirs they are not landowners; and what machinery exists for making Colonel Tomline convey to the undertakers, when the undertakers are not agreed? Supposing even that Mr. Weston had the land, it would only be as a trustee for the undertakers, the persons properly to petition.

Mr. RICKARDS: Colonel Tomline and Mr. Weston are the only two undertakers, and we agree to sell to the other.

Stephens: Colonel Tomline by mere inaction could defeat the Provisional Orders; and Mr. Weston by himself can make no use of the land, which moreover he has not got. His petition must be regarded as that merely of an individual. (*Tottenham and Haringey Railway Bill*, 2 *Cliff. & Steph.* 34; and *North Eastern Railway Bill*, *Petition of Iron Manufacturers*, 2 *Cliff. & Steph.* 147.)

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioner is *affirmed*.

Agent for Bill, *Sharky*.

Agent for Petitioner, *E. Wainman*.

KEW AND OTHER BRIDGES ACT, 1869, AMENDMENT BILL.

Petition of (1) JUSTICES OF THE PEACE FOR THE COUNTY OF MIDDLESEX.

20th April, 1873.—(Before Mr. H. C. RAIBES, M.P., Chairman of Ways and Means, in the Chair; Sir JOHN ST. AUSTIN, M.P.; Mr. RICKARDS; and Mr. BOSMAN-CARTER.)

Money Bill—Amendment of Act—Additional Borrowing Powers—Metropolitan Bridges—Freeing from Tolls—County Justices—Repairs of Bridges—Additional burden upon County

Rates—Injury under former Act—Statutory obligation, imposed without Notice—Status of Petitioners, unaffected by Bill—Irrelevant objections to Bill—Practice—Individual Signature—Authority to sign Petition—Justices of the Peace—Clerk of the Peace.

The bill, which was really a money bill, made additional provisions, supplementary to an Act of 1869, for raising money on the security of the coal and wine duties, in order to accelerate the freeing of certain metropolitan bridges from tolls. Under the Act of 1869, the bridges on becoming toll-free were to be maintained as county bridges, and the bill was now opposed by the justices of Middlesex, who, as guardians of the county rates, contended that, county interests being involved, they should be represented on the joint committee constituted by the Act of 1869; that the bridges, before being handed over to the county, should be placed in proper repair; and that a fund should also be provided for maintaining them. It appeared, however, that the obligation devolving upon the county was imposed by the original Act, and that the bill did not alter or increase the liabilities of Middlesex:

Held, that the complaint of the petitioners really applied to past legislation, and that they had no *locus standi* against the present amendment bill, though they alleged that they received no notice of the Act of 1869, and did not know that it would impose new financial burdens on the county.

A petition purporting to be the petition "of her Majesty's Justices of the Peace for the county of Middlesex, in general sessions assembled," was signed by the Clerk of the Peace "by authority of the Court, and on behalf of the justices in general sessions assembled." It was objected that, under these circumstances, the petition was not really that of the county justices, but of an individual:

Objection over-ruled by the Court without argument.

The *locus standi* of the petitioners was objected to, because (1) they allege that the bridges yet remaining to be freed from toll under the Kew and other Bridges Act, 1869, namely, the Hampton Court, Chingford, and Tottenham Mills bridges, ought not to become county bridges

until they have been put in a proper state of repair; but this objection is irrelevant to the present bill, and ought, if at all, to have been urged when the Act of 1869 was before Parliament; (2) their interest is limited to the bridges or approaches thereto situate in Middlesex, whereas only one-half thereof are situate in that county; (3) the petitioners seek to alter the constitution of the joint committee, appointed under the Act of 1869, so as to admit of their being represented on the Committee, but this demand is foreign to the present bill, and ought, if at all, to have been made in 1869; (4) the petition is not really that of the Justices of the Peace for Middlesex, being only signed by the Clerk of the Peace; (5) the Justices and, *a fortiori*, the Clerk of the Peace, cannot be heard according to practice.

Rigg (for petitioners): This is "a bill for conferring enlarged borrowing powers on the joint committee acting under the Kew and other Bridges Act, 1869, and for otherwise amending that Act, and for giving better effect to the provisions of the Act authorising the construction of the original Hampton Court bridge, and for other purposes." The joint committee, who promote the bill, were incorporated under the Act of 1869, with power to free a number of Metropolitan bridges from tolls. They have up to this time freed all the bridges named in that Act, with the exception of Hampton Court, Chingford, and Tottenham Mills bridges. In order to free these three bridges, they seek, under the present bill, enlarged borrowing powers. The original Act of 1869 was obtained without communicating with us. We were not aware of its provisions till the bill became law, and as the joint committee, which is composed of six members of the Common Council of London, appointed by the corporation, and six members of the Metropolitan board of works, appointed by that board, is not concerned to protect county interests, the consequence is that the bridges which have been already freed of tolls by them have been handed over to the counties of Surrey and Middlesex in a most dilapidated condition, and an unduly heavy charge has been thereby imposed upon the county funds. If this bill is passed, the three remaining bridges will be handed over to us in a similar condition before the time contemplated by the Act of 1869, and a correspondingly heavy burthen will be thrown upon our rates. The bill provides no funds out of which these dilapidations can be made good, and no guarantee that the bridges shall be handed over to us in a proper state of repair. We claim the insertion of clauses to ensure these reasonable conditions, and also to give us some representation upon the joint committee. Then clause 6 of the bill varies the provisions of the Act of 22 Geo. II., for the construction and maintenance of the original Hampton Court bridge, for which the present one was afterwards substituted, and transfers the right of purchasing it to the joint committee instead of the Crown.

Mr. RICKARDS: How will the increased borrowing powers sought under the present bill impose a burden upon the county? Does the bill empower the joint committee to free any

more bridges than the Act of 1869 empowered them to free?

Rigg: No. But they have not yet freed all the bridges, and they cannot do so without borrowing this additional sum. We did not oppose the Act of 1869, because we had no notice of the burden which would be cast upon the rates. Now that we find that we are sufferers from the Act, and before any further expense is saddled upon us, we contend that we ought to be heard. The expense of keeping up the three bridges, after the joint committee have handed them over to us, will fall upon the county rates, and as the Committee admit that they cannot free them and hand them over to us without borrowing more money, we claim to appear against their bill. Clause 6, with regard to Hampton Court bridge, introduces entirely new matter. As to the 2nd objection, the justices are at any rate responsible for half the bridge; and our answer to the 3rd objection is, that the justices were not aware in 1869 how that Act would affect their interests.

The CHAIRMAN: You need not contest objection 4.

Rodwell, Q.C. (for promoters): In 1868 a public Act declared the expediency of freeing these quasi Metropolitan bridges from toll, and in 1869 a bill was brought in to enable the Metropolitan board and the City of London to dedicate a fund and elect a joint committee for the purpose of carrying out that object. The outlay hitherto has been larger than the joint committee anticipated, and they now come for additional borrowing powers to the amount of £25,000 in order to accelerate the freeing of the remaining toll bridges specified in the Act. We introduce no material alterations in clause 6 as to the purchase of Hampton Court bridge. The original Act, 22 Geo. II., provided that the Crown should buy up the property. The present bill transfers this purchasing power to the joint committee instead of the Crown, but this change will not divest the Crown of a nominal right to Hampton Court bridge, or affect the interests of anyone except the owner, who has petitioned, and will be heard. This is simply a money bill for expediting the process sanctioned by the Act of 1869, and making these county bridges toll-free in three instead of ten years.

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) the EAST LONDON WATER WORKS COMPANY.

Amendment Bill—Additional Borrowing Powers—Metropolitan Bridges—Purchase of—Extinction of Toll—Owners of Bridge Tolls—Former Act—Permissive Powers of Purchase objected to by Owners—Limitation of Time for Compulsory Powers—Status of Petitioners under Amendment Bill.

A joint committee, elected by the Metropolitan board of works and the Corporation of London, under the Kew and other Bridges Act, 1869, promoted an amendment bill mainly for the purpose of raising further money to carry out the objects of that Act, namely, the purchase of certain Metropolitan bridges and freeing them from tolls. The bill was opposed by a water company, who were owners of the tolls on two of the bridges remaining to be freed from toll, and who urged that their status would be changed by the bill, for whereas no time was limited by the Act of 1869 for the exercise of the compulsory powers of purchase, it was now proposed that these powers should expire within three years after the passing of the bill. The petitioners contended that if the compulsory powers were not exercised within this period, the joint committee could not afterwards be required to buy the bridges at all, and that thus the intentions of the Legislature in 1869 would be frustrated:

Held, that the petitioners were not entitled to a *locus standi*.

The bill recited (*inter alia*) that "doubt may be entertained whether or not any time was limited for exercise of the compulsory powers of purchase conferred on the joint committee by the Bridges Act of 1869, and whether or not the time so limited (if any) is expired, and it is expedient that all ground for doubt in those respects be removed, and that a time to be computed from the passing of this Act be limited in that behalf." And section 5 enacted that "the compulsory powers of purchase vested in the joint committee by section 11 of the Bridges Act of 1869 are hereby (if need be) revived, and the same shall be exercisable by the joint committee at any time within three years after the passing of this Act, but not later."

The *locus standi* of the petitioners was objected to, because (1) they claim only to be heard as owners of the tolls taken in respect of the Chingford and Tottenham Mills bridges, comprised within the powers of the joint committee appointed under the Kew and other Bridges Act of 1869, and they allege that the bill ought to provide for the compulsory exercise by that committee of their powers as to freeing those bridges from tolls, but they are not entitled to be heard upon any such ground, inasmuch as the powers conferred upon the committee by the Act of 1869 are permissive and enabling, and the petitioners are not prejudiced, nor do they allege that they are so, by any delay in freeing those bridges; (2) any objection on this ground should have been taken to the original Act of 1869; (3) provision for assessing and paying the compensation payable in respect of the bridges yet

to be freed from toll has already been made by the Act of 1869; (4) there are no grounds for a hearing according to practice.

Clerk, Q.C. (for petitioners): We are the owners of the tolls taken in respect of the Chingford and Tottenham Mills bridges, both of which are comprised within the powers of the joint committee appointed under the Act of 1869. The joint committee propose by the bill to raise further funds in order to free these two bridges. We object in our petition that there should be a more satisfactory definition of their duties in this respect. The purchase of our bridges ought to be made a matter of statutory obligation, and not left to the option of the joint committee. Under this bill the compulsory powers of purchase vested in the committee are to be exercisable by them only within three years after the passing of this Act. There is this alteration in our status—that in the Act of 1869 there is no limitation of time for purchasing, whereas now the power to purchase can only be exercised during three years, so that, if the remaining bridges are not bought within that period, we cannot afterwards compel the joint committee to purchase them at all.

Rodwell, Q.C. (for promoters), was not called on.

Locus standi Disallowed.

Agents for Bill, Dyson & Co.

Agents for Petitioners, Sherwood & Co.

LANCASHIRE AND YORKSHIRE RAILWAY BILL.

Petition of OWNERS, LESSEES, AND OCCUPIERS OF LAND IN BRIGHOUSE.

16th April, 1874.—(Before Mr. H. C. RAIKES, M.P., Chairman of Ways and Means, in the Chair; Sir JOHN ST. AUBYN, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Extension of Time Bill—Landowners' Rights against—Owners, Occupiers, &c.—Insufficient Allegations—Traders—Trade Injurious Affected—Inhabitants—Not Representatives—Injury alleged, through delay in Completing Railway—Alternative Line Prevented—Local Act, Commissioners under—Compulsory Powers, not Extended by Bill—Contracts with Landowners completed by Railway Company.

A bill to extend the time for the completion of a railway and works, authorised under a former Act, was opposed by petitioners representing themselves as owners, occupiers, and lessees of lands "on or near" the railway, or as inhabitants of Brighouse. The compulsory powers of purchase had already

been exercised, and it appeared that only one of the petitioners could be properly described as a landowner whose property was taken under the Act; that he had already contracted with the promoters for the purchase of his lands; and that the petition contained no specific allegation of injury to him or other petitioners, *quâ* landowners. It was objected that the other petitioners were merely individual traders, whose interests as such did not entitle them to appear; and that they could not be heard in a representative capacity as inhabitants since, on their own admission, there was a body of commissioners appointed under a Local Act in 1846, who were the proper parties to petition:

Held, that on these grounds the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they claim to be heard as "owners, lessees, or occupiers of lands and other property on or near the line of the authorised Brighouse branch railway, or of property at Brighouse, or as being inhabitants there," but no right to be heard is claimed in respect of the ownership of land or property upon the line of railway as distinct from the other qualifications of the petitioners, nor is it shown in respect of which qualification they claim to be heard; (2) they have no right to be heard as owners, lessees, or occupiers of land or property on the line of railway, because (a) the bill gives no power to take any of their land or property, and extends no powers heretofore granted for the purpose; (b) it is not shown how they will be injured in respect of such land or property, and the general allegation is too vague; (3) they cannot be heard in respect of property at Brighouse, not being on the line of the railway, or as inhabitants there, because (a) they do not allege that they have been authorised at any public meeting to represent the inhabitants of Brighouse; (b) they do not allege that Brighouse is injuriously affected by the bill; (c) their petition discloses that a body of commissioners have been created with powers to protect and improve the town of Brighouse, and the petitioners have no such interest in the protection of the town as entitles them to be heard according to practice.

Gorst (for petitioners): The original Act for making this line from Brighouse to Bradford was obtained by the promoters in 1866. This is the third time they have asked for an extension of time to complete the line. On both the former occasions they conceded our *locus standi*, and the Committee considered our grievance so substantial that they shortened the extension of time then asked for. As to the first objection, we submit that the Court will not take a narrow technical view of the language of the petition. One of the petitioners is Martha Aspinall, who

supply to the township was sufficient, and that their rates would be increased under the Provisional Order :

Held, that as it would be optional with the commissioners, and with the governing bodies of the other townships concerned, to take or decline the proposed additional supply of water, and as any increased taxation for water must, therefore, be voluntarily imposed, the petitioners had no *locus standi*.

The petitioning railway company urged, *inter alia*, (1) that the water mains of the corporation were laid for a considerable distance near the railway, which would be endangered if the quantity of water passing through the mains, and the consequent pressure, were increased; (2) that if the governing bodies in the various townships called for an additional supply, the railway company would be subjected to increased rates, though they would consume no more water; and (3) that, as owners, the value of their property in Dublin and other townships would be depreciated by its liability to further taxation :

Held, that (1) the structural injury apprehended was not of a nature entitling the petitioners to appear; (2) that, as single ratepayers in the townships traversed by their railway, they could not be heard against possible future taxation, which could only be imposed with the sanction of the representative local bodies; and (3) that the alleged depreciation of their property as owners gave them no *locus standi*.

In a bill to confirm a single Provisional Order, the Committee of the House of Lords had inserted a saving clause. Petitioners now contended that this clause was unworkable, or that, if capable of application, its effect would be injurious to them :

Held, after discussion, that the bill, though a public bill, and the Provisional Order, must be dealt with as a whole, and arguments *pro* and *con* were accordingly heard as to the *locus standi* of petitioners against the saving clause in the bill. [*See Local Government (Ireland) Act, 1871, section 8.*]

The *locus standi* of the petitioners was objected to, because (1) no property of theirs is taken, and their rights are not interfered with; (2) their present position will be unaltered under the Provisional Order; (3) the railway company will not be

injuriously affected, and are represented in the different townships by local authorities, in the City of Dublin by the corporation, and in the County of Dublin by the grand jury, and even were it otherwise, they could have no right to appear as a single ratepayer; (4) the present liability of the petitioners to be rated with respect to their lands, &c., remains unvaried; (5) clause 2 of the bill does not injuriously affect the Bray commissioners; (6, 7, and 8) various allegations in the petition are inaccurate, and, even if accurate, contain no grounds for a hearing against the preamble or clauses of the bill; (9) the Provisional Order issued by the Local government board (Ireland) was not *ultra vires*, but even if *ultra vires*, it gives no right to either of the petitioners to be heard; (10) no allegations are made, or grievances disclosed, entitling the petitioners to a hearing.

Pembroke Stephens (for petitioners): The Provisional Order is an unusual one, and we allege that the Local Government Board in Ireland have acted *ultra vires* in issuing it. The City of Dublin, in whose behalf the Provisional Order was granted, is under the Municipal Corporations' Act, but outside the City of Dublin a number of independent jurisdictions have grown up which are townships under the Towns Improvement Acts, supplemented by Acts of their own. Of these, the Bray township is the farthest from Dublin. The Dublin corporation have two distinct aspects: within the City of Dublin they are the only constituted municipal authority and governing body, and may properly apply for a Provisional Order affecting the local government of the city itself; beyond it, they are a *quasi* water company, inasmuch as they supply different townships (among which is Bray) with water at a profit. Although the provisions in the Corporation Act of 1866 (with regard to this supply of water) are permissive, they are practically compulsory, because, within the water limits of the corporation, we cannot get a supply from anybody else. It is expressly provided by the last section of the Act of 1866 that we shall not go to any one till we have been to the corporation, and the corporation have the monopoly of the supply. The corporation receive yearly or other rates in respect of the present supply of 20 gallons per head per day, which is amply sufficient. They seek by the bill to supplement this supply, and although the clauses relating to it are permissive in their language, they will in practice be found compulsory. Under clause 8 the corporation may supply, the commissioners of the respective townships may take this extra quantity, and the corporation are authorised to charge additional rates for the service. Such provisions alter the present conditions of supply altogether.

The CHAIRMAN: The clause is purely permissive. If you do not want the extra supply you are not obliged to take it. The clause will only operate if you want the water (which you say in your petition you do not).

Stephens: The Act of 1866 was also permissive in its language, but practically it has been compulsory towards us. We are content to stand on the Act of 1866.

The CHAIRMAN: But that Act may not go far enough; you may want more water than you get under that Act.

Stephens: The bill will affect the townships in another way, because, while clause 8 enables the township authorities to pay this extra rate for the additional supply, the townships are bound by their respective Acts not to raise their taxation beyond a certain amount. The object of the corporation is to reduce their own internal taxation by levying external rates. The townships meanwhile, paying extra rates to the corporation, will have less money to spend at home.

Mr. RICKARDS: Your taking the supplementary supply at all is entirely optional. The compulsion is upon the corporation. The townships need only buy water if they think fit; but if they ask for it, the corporation are bound to supply it. Thus the key of the position is with the township authorities, who cannot have the additional supply forced upon them unless they ask for it, and consent to pay for it. I cannot see any compulsory taxation in the Provisional Order.

Stephens: Then I will call attention to another point. Clause 2 of the bill provides that, as to that part of the township of Bray situate within the county of Dublin, the powers given to the corporation under the Provisional Order shall only be exercised after their sanction by a special resolution of ratepayers. Now the larger part of Bray township is situate in the county of Wicklow, and therefore it may happen that the Wicklow part of Bray may be subject to one system of water supply, while the Dublin part of Bray is subject to another system, and to different rates levied by the corporation of Dublin.

Granville Somerset, Q.C. (for promoters): The clause was inserted by the Lords' Committee, not by us. My learned friend pointed out to the Committee that the county of Dublin is exempted from the provisions of the Local Government (Ireland) Act, 1871, except after special approval by the ratepayers. He argued, therefore, that Parliament ought to continue the exemption; and it was continued accordingly.

Stephens: The mistake was committed by the Local Government Department, who overlooked this exemption in the Act of 1871; and the Lords' Committee, after we left the room, endeavoured to cure the mistake by inserting clause 2. If, however, the result is to make the scheme unworkable, I am entitled to come here and object. Our township is one; it was so created by the Incorporation Act of 1866; but now the corporation of Dublin, for their own purposes, propose to cut the township in two.

Mr. RICKARDS: Clause 2 is a clause in a public bill. Is not what we have to deal with the Provisional Order, not the bill?

Somerset: The bill is only one to confirm this single Provisional Order, and I apprehend you have to deal with the bill and the Provisional Order as a whole.

Mr. RICKARDS: Why was not clause 2 inserted in the Provisional Order instead of in the bill?

Somerset: We suggested that it should be so, but the Board of Trade were of a different opinion.

Stephens: We must take the bill as it stands; and if instead of submitting their proposals to Parliament in the ordinary way, the promoters adopt faulty machinery, we have a right to be heard, and to show how we shall be affected.

The CHAIRMAN: If this be a public bill, are not the members for Wicklow the proper persons to move in the House of Commons the omission of clause 2?

Stephens: I submit that as regards *locus standi* the whole bill is before you. Unless this public bill has the Provisional Order scheduled to it, it is a nullity. In being heard, therefore, against the Provisional Order, we must be heard against the bill, more especially when the insertion of this clause has been the act of a tribunal of co-ordinate jurisdiction. The Dublin, Wicklow, and Wexford railway company allege that, in the townships traversed by their line, the large water mains of the Dublin corporation are laid for a considerable distance in lands closely adjoining their railway; and having regard to accidents which have already occurred from the bursting of these mains, the additional water supply now proposed, involving, as it must, additional pressure, should only be assented to under very stringent conditions for the protection of the railway and the public generally. We also object to any increase in our water-rating. If the townships take this extra supply our rates will be raised, though we may not want a spoonful more water.

The CHAIRMAN: If the railway company can be heard on this ground, any railway company may be heard against every improvement bill promoted by the governing body of any one of the towns through which the railway passes, on the ground that their rates may be thereby increased.

Stephens: As a railway company, we have no representation upon any of these local governing bodies. Our railway went into these townships under certain fixed laws as to rating; and now the corporation propose, for their own convenience, to alter the scale of rating to our detriment, while we shall have no voice in the matter.

Mr. RICKARDS: It is a question of a single ratepayer.

Stephens: Under the Towns' Improvement (Ireland) Act, 1854, the assessment on railway property is in certain cases limited to one-fourth of the net annual value, but this limitation is not contained in the Provisional Order.

Somerset: We do not alter the law as regards this exemption.

The CHAIRMAN: The townships will pay for the increased supply out of the ordinary rating of each township, as leviable under the existing Acts, which give the railway this exemption. No doubt the company will be liable to pay a greater amount of rates than before, but a railway company with a continuous line through various towns cannot be heard, as a single ratepayer, against any improvement bills brought forward by the governing bodies of those towns.

Stephens: This is not a bill promoted by one of the townships through which the railway runs.

The CHAIRMAN: But the exercise of the rating

powers depends upon whether the township chooses to buy the water.

Stephens : Another point urged by the railway company is that, under clause 12 of the Provisional Order, we shall be liable to an increased rate for fire-brigade purposes, thus varying to our prejudice the provisions of the Dublin Corporation Fire Brigade Act, 1862. As owners of property in Dublin and the adjoining townships, we have a right to be heard in respect of the depreciation in value caused by this increase of direct taxation.

The CHAIRMAN (to Somerset) : We need only trouble you as to clause 2. The Act which regulates Provisional Orders says, that if a petition is presented against a Provisional Order, the bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose, as in the case of a bill for a special Act (Local Government Act, Ireland, 1871, section 8). That being so, the question is whether the petitioners are not entitled to oppose clause 2 on the ground that it divides Bray into two parts for the purpose of rating.

Somerset (in reply) : The attention of the Lords' Committee was called to the fact that, by section 32 of the Act of 1871, towns in the county of Dublin were exempted from the application of any Provisional Order, unless with the special consent of the ratepayers. The bill as it then stood certainly altered the status of the Dublin portion of Bray in this respect, and the Committee introduced clause 2, which simply leaves the ratepayers in exactly the same position as before. [*He was then stopped.*]

Locus Standi of both Petitioners Disallowed.

Agent for Bill, *Muggeridge*.

Agents for Petitioners, *Holmes, Anton, Greig & White*.

LONDON AND BLACKWALL RAILWAY BILL.

Petition of GREAT NORTHERN RAILWAY COMPANY.

4th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Railway Extension—Agreement between Railway and Dock Companies—Protection under former Act—"Most Favoured Railway" Clause—Equal Facilities—Running Powers—Traffic—Statutory Obligations, preservation of—Rights of Petitioners unchanged.

Section 15 of the bill empowered the Blackwall and Great Eastern railway companies to agree with the East and West India and Millwall dock companies for the use by the dock companies of the Blackwall company's

Millwall extension railway, which was authorised by an Act of 1865. The Great Northern company petitioned against the bill, alleging that they would, or might, be deprived of certain protection given to them by the Act of 1865, which contained a "most favoured railway" clause in their interest; and they now sought to insert in the bill a similar provision which should be binding upon the dock companies in working the line. The petitioners urged, further, that their interests might suffer under the proposed agreements, they already having statutory powers to run over the railways "for the time being" of the Blackwall railway company :

Held, that as the extension line, in the event of its transfer to the dock companies, would be taken over with all its existing liabilities, the protection given to the petitioning company under the Act of 1865 was not affected by the bill, and *locus standi* disallowed.

The *locus standi* of the petitioners was objected to, because (1) no powers are sought over their lands, railway station, or accommodations; (2) clause 15, to which they object as containing powers of agreement between the London and Blackwall and the Great Eastern railway on the one hand, and the East and West India Dock company and the Millwall dock company, or either of them, on the other hand, with regard to the working by the dock companies of the Millwall extension railway, cannot prejudice the traffic conveyed by the petitioners to and from the Millwall docks, nor do they allege how it will do so; (3) clause 15 will not prejudice their existing rights to pass with their engines and carriages over the London and Blackwall railways to the East and West India and Millwall docks; (4) they do not allege any grounds entitling them to be heard according to practice.

Saunders (for petitioners) : The London and Blackwall line is worked and leased by the Great Eastern company under an Act of 1865. In the same session, an Act was obtained for making a line called the Extension railway, which is the railway dealt with by the bill, and with regard to the working and use of which section 15 enables the Blackwall and the Great Eastern companies to make agreements with the East and West India and Millwall dock companies. We have an interest not only in the railway leading up to this Extension railway but in the railway itself, inasmuch as we have running powers over the North London railway, which forms the physical means of communication between the Great Northern and the London and Blackwall railways, and also by the Leasing Act of 1865 "over the London and Blackwall railway, and any lines for the time being belonging to the Blackwall railway company,"—*ergo*, we have

ments, and the corresponding portions of the preamble.

In the case of a bill to confirm certain agreements which the promoters said they had the power under statute to make already, whether Parliament confirmed them or not: *Per Cur.*) If Parliament are asked to confirm agreements, have not petitioners a right to be heard upon the question whether such agreements shall be confirmed?

In 1864 and 1870 the London and North Western, the Irish North Western, and the Dundalk and Greenore railway companies were authorised to make agreements for the interchange of traffic by way of Holyhead and Greenore, but were bound to give equal rates and facilities to other competing companies. The bill by clause 42 confirmed certain agreements with regard to through rates and exchange of traffic by this route, entered into between the respective companies, and framed with a view to encourage the traffic between England and Ireland by a new line of steamers plying between Holyhead and Greenore. The petition of the Dundalk and Newry Steam Packet company, limited, and 104 merchants, traders, and others, alleged that the company, since 1858, had run steam packets between Dundalk and Liverpool, Newry and Liverpool, and Newry and Ardrossan; that up to May 1st, 1873, they had a system of through-booking with the Irish North Western railway for the transmission of the cross-channel traffic, which was beneficial to the public, as affording facilities for trade; that on May 1, 1873, the London and North Western railway company began to run their new line of steamers from Holyhead to Greenore, and since that date the Irish North Western company had discontinued the through-booking arrangements with the petitioners, through rates now being only allowed for goods forwarded by the Holyhead and Greenore route; that this was the result of the agreements made between the London and North Western, the Irish North Western, and the Dundalk and Greenore railway companies, which the bill sought to confirm, and was a great injury both to the Steam Packet company, and a serious inconvenience to the petitioning merchants and traders.

The petitioning railway companies complained that the object and effect of the agreements would be to give to the London and North Western a monopoly of the traffic to and from the north and north-west of Ireland, to the exclusion of the petitioners, inasmuch as the Irish North Western railway company, in consequence of the agreements, refused to make through-rate arrangements for traffic by any other route than that by Holyhead and Greenore.

The Dundalk harbour commissioners alleged that the chief trade of their port had been hitherto carried on by the Dundalk and Newry Steam Packet company, and that the dues paid by them formed a large part of the revenues of the petitioners; that since May 1, 1873, the

London and North Western railway company had done all in their power to divert the traffic from Dundalk to Greenore; and that should the agreements be confirmed, the effect would be the diversion of this traffic and serious loss of revenue to the petitioners.

The *locus standi* of (1) the Dundalk and Newry Steam Packet company and 104 merchants, &c., was objected to, because (1) they complain of Acts and privileges which are not the subject-matter of the bill; they do not show themselves aggrieved by the provisions of the bill; and if the proceedings they complain of are illegal and inequitable, these proceedings can be redressed by the proper tribunals; (2) the petitioners' objections only apply to clause 42 confirming existing agreements, and if any injury is inflicted by that clause it is from competition, which is not a new but an already existing competition; (3) they are not entitled to be heard according to practice.

The *locus standi* of (2) the petitioning railway companies was objected to, because (1) the effect of the agreements will not give the promoters such a monopoly of traffic, or create such competition, as entitles the petitioners to be heard; (2) the other matters complained of do not entitle them to be heard against the bill.

The *locus standi* of (3) the Dundalk harbour commissioners was objected to, because (1) the agreements do not prejudice their interests, whether with respect to dues receivable by them or otherwise; (2) the confirmation of the agreements does not affect them prejudicially; (3) the other statements in their petition, even if true, do not entitle them to a hearing.

Pembroke Stephens (for the Dundalk and Newry Steam Packet company, and merchants, &c.): A branch of this question was decided by the Court in 1870 (2 Cliff. & Steph. 65), and the monopoly we apprehended in 1870 has become a reality in 1874. The London and North Western company are largely interested in the Irish lines converging at Greenore. They own the steamboats running between that port and Holyhead, and they seek to drive the traffic as far as possible into that route alone. Thus we find through rates absolutely stopped under the agreements, except *via* Greenore and Holyhead, and as between the three companies parties to the agreements, the reason being that under the agreements the proceeds of the traffic *via* Holyhead and Greenore will be thrown into a joint purse and divided between the three companies. This is the effect of the agreements, the object of which is to obtain a monopoly of the cross-channel traffic for the three companies, and divert the traffic for their benefit to a route which is not the natural and the shortest route. Of the three agreements, the third is to over-ride the other two, and only the first has been approved by the Board of Trade, so that to confirm them will be to confirm agreements which have never been submitted to the Board of Trade or to Parliament, and to vary an agreement which has been so submitted. The merchants, traders, and freighters who sign the petition are 104 in number. Though you have not in express terms decided that a single trader cannot be heard, you have decided over and over again that a class of

traders can be heard. These traders constitute a class; they are resident in places all over the district traversed and served by these railways, and they are of all descriptions of trades and business. Their interest is that existing routes should be preserved, and they have their own specific grievance, for they allege that since the opening of the railway to Greenore every obstruction has been offered on the Irish North Western railway to those of the petitioners who desired to consign cattle and goods to Liverpool *via* Dundalk. This bill is the creation of a monopoly, and the three agreements furnish the basis for a virtual amalgamation injurious to the petitioners. At least, we ask for the insertion in the bill of proper clauses for our protection.

Pember, Q.C. (for the petitioning railway companies): When the London and North Western (Traffic Arrangements Act), 1864, was pending in Parliament, we, together with other owners of railways and canals in England, opposed the bill from an apprehension that it might lead to a monopoly, by the London and North Western railway company, of Irish traffic, and at our instance provisions were inserted in that Act with a view to protect our interests, and indirectly to secure to the public on both sides of the channel a fair competition. Practically, those provisions in the Act of 1864 have not had the effect which we contemplated, and we allege that the agreements scheduled to the bill will give the London and North Western railway company a monopoly of traffic arising in, or destined for, the north and north-west of Ireland. We say further that these agreements ought not to be confirmed, unless on the condition that the Irish companies shall make with us through rates in all respects as advantageous as those from time to time subsisting between them and the London and North Western railway company, and that it shall be lawful for the railway commissioners, upon proof to them of undue favour by the Irish companies towards the London and North Western railway company, to direct that there shall be afforded to us and to other English railway and canal companies, competing for traffic between England and Ireland, such facilities as the commissioners think fit, and upon such pecuniary conditions as they shall prescribe. It is suggested that we can go to the railway commission already, but the Act appointing this tribunal is imperfect to this extent—that the only party who can ask for a through rate is the forwarding company, and we are not the forwarding company from Ireland. We might ask for a through rate from England, but the traffic from Ireland to England is much more important than from England to Ireland. In 1864 we obtained the insertion of protective clauses, and again in 1873 we got a *locus standi* against a bill, authorising the London and North Western company to advance a certain sum of money for the completion of the Dundalk and Greenore line. In the case of the Scotch amalgamations, a *locus standi* was given to all the English companies, for the sake of maintaining Scotland as an open market for English traffic. We claim that Ireland should be treated in a similar way.

Salisbury (for the Dundalk harbour commissioners): The effect of confirming the agreements will be to divert and drive away traffic from the port of Dundalk to Greenore, and thus to reduce our revenue arising from dues. We therefore ask to be heard against the bill, at all events to obtain clauses insuring the same facilities to the trade between Dundalk and Liverpool as are afforded to that between Holyhead and Greenore.

Rodwell, Q.C. (for promoters): The simple answer to the complaint of the Dundalk harbour commissioners is, that we have the sanction of Parliament for our Greenore service. Our answer to all the petitioners is this:—In 1864 and 1870 we obtained authority from Parliament to enter into traffic arrangements and make agreements; we have made them; and all we ask now is that they may be confirmed. The Act of 1864 provided that if we entered into any agreements, we should, if required, enter into similar agreements with other companies. If the petitioners do not come within the provisions of this Act, the Legislature must have considered them not entitled to do so. What they really want are through rates. The question was discussed and settled in 1864 and 1870, and our power to make agreements was recognised in the Act of 1870, to which a memorandum of agreement was scheduled between the London and North Western, the Irish North Western, and the Dundalk and Greenore companies.

The CHAIRMAN: You say that previous legislation gives you the power to make agreements. Then what is the object of confirming these agreements by the bill?

Rodwell: We undertook to introduce a confirmation bill when requested to do so by either of the Irish companies. The Irish North Western has made this request, seeming to think there is some charm in scheduling the agreements to an Act of Parliament; and the petitioners say they will be prejudiced by the confirmation, but we have the power to make the agreements whether they are confirmed or not.

Mr. RICKARDS: If you ask Parliament to confirm the agreements, does not that give the petitioners a right to be heard upon the question whether such agreements shall be confirmed by Parliament or not?

Rodwell: The confirmation is more a ministerial than a judicial act on the part of Parliament. We are already authorised to make what agreements we please respecting the exchange of traffic, through rates, and conveyance of traffic; but whatever we do must be subject to the adaptation of such provisions to the cases of other carriers.

The CHAIRMAN: The *locus standi* of the three sets of petitioners is *Allowed* against Clause 42, and so much of the preamble as relates thereto.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners (1 and 3), *Bryden & Robinson.*

Agents for Petitioners (2), *Dyson & Co.*

LONDON AND NORTH WESTERN RAILWAY (WALES) BILL.

Petition of (1) THE MIDLAND RAILWAY COMPANY.

6th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies—Running Powers—Competition—Diversion of Traffic—Interchange of Traffic—Virtual Amalgamation—Power to Make Agreements.

By clause 25 in an omnibus bill, running powers were given to the London and North Western railway company over a branch of the Monmouthshire railway, and clause 29 authorised the two companies to enter into and carry into effect agreements for the use of their respective lines and the interchange of traffic. The Midland railway company complained that, under these clauses, agreements might be made which would place the entire control of the Monmouthshire traffic in the hands of the London and North Western, thus diverting from the Midland the traffic which they had hitherto received from the Monmouthshire railway. It appeared that the petitioners had no running powers over the Monmouthshire line, but had running powers over the Great Western to Pontypool, where the Midland and the Monmouthshire systems met:

Held, that the petitioners had a *locus standi* against clauses 25 and 29.

The *locus standi* of the petitioners was objected to, because (1) they have no right or property in the Monmouthshire railway, or any agreement with that company which can be prejudiced by the bill; (2) no such competition or diversion of traffic is disclosed as entitles them to be heard; (3) the proposed agreements between the promoters and the Monmouthshire railway company cannot materially affect their interests; (4) their apprehensions, even if well founded, would not entitle them to a hearing.

Cripps, Q.C. (for petitioners): We have running powers to Pontypool, where we join the Monmouthshire railway. We are, therefore, largely interested in the transmission of traffic to and from the Monmouthshire railway, and we are competitors for such traffic with the London and North Western railway company. So long as the Monmouthshire railway is an independent line, we can maintain this competition with advantage to the public and ourselves. Under the bill, however, agreements may be entered into between the promoters and the Monmouthshire railway company which would have the effect of

entirely diverting the traffic from us. Clause 29 is in effect equal to an amalgamation clause.

Rodwell, Q.C. (for promoters): The nearest point in this district to which the Midland come by their own line is Worcester. Thence they have running powers over the Great Western to Pontypool. They have no actual connection with the Monmouthshire line, no running powers over it, and no traffic arrangements with it. Even if this were an amalgamation bill, they would have no more *locus standi* than any other railway companies in the kingdom, who in any way interchanged traffic with the Monmouthshire railway. The Midland company are simply one set of carriers from Pontypool in one direction, and the Monmouthshire are carriers in another direction. Meeting at Pontypool, there may be an interchange of traffic at this point, but that is all. If the Midland had running powers over the Monmouthshire railway, they might perhaps have a *locus standi*. As it is, they have no more right over it than the general public.

Locus standi Allowed against Clauses 25 and 29.

Agents for Petitioners, *Beale, Marigold and Beale*.

Petition of (2) LLANELLY RAILWAY AND DOCK COMPANY.

Railway Extension—Running Powers over Original Line—Sought for as to Extension—Loss of Traffic Apprehended.

The Llanelly railway and dock company claimed to be allowed running powers over one of the extension lines authorised by the bill, on the ground that they already possessed running powers over the line proposed to be extended, and that these powers ought to apply to the extension:

Held, that the petitioners, whose *locus standi* was admitted against other parts of the bill, had no *locus standi* against the extension line.

The *locus standi* of the petitioners was objected to, because their possession of running powers over the Penclawdd branch railway of the promoters gives them no claim to running powers over the proposed extension of that railway, nor do the petitioners state any ground upon which they rest this claim, and they are therefore not entitled to be heard on those parts of the petition referring to the Penclawdd branch and running powers.

Michael (for petitioners): Our *locus standi* is not objected to, except so far as regards the Penclawdd branch. This line was in reality constructed by us, but has passed into the hands of the London and North Western railway company, and we only retain running

powers over it. Now that the promoters are about to extend that branch, we seek to have our running powers extended also. If they are not, the bill will injure us, as we shall lose much of our goods' traffic.

Mr. RICKARDS: You want something to be put in the bill which is not in at present.

Rodwell, Q.C. (for promoters): The claim of the Llanelly company is untenable. It amounts to this—that because they have running powers to A, therefore, if the line is extended to B, they ought to have running powers over the portion extending from A to B.

Locus standi Disallowed as against the Pen-clawdd Branch and Extension.

Agents for Petitioners, Dyson & Co.

Petition of (3) THE BALA AND FESTINIOG, THE FESTINIOG AND BLAENAU, and THE GREAT WESTERN RAILWAY COMPANIES.

Railway—Competition—Diversion of Traffic—Projected Line Alleged to be Unnecessary—Block Line.

Three railway companies petitioned against a bill enabling a fourth railway company to construct a new line, and asked to be heard, first, on the ground of competition, and, next, because, as they alleged, parts of the proposed line were unnecessary, and promoted merely as a block line, with a view to injure the existing traffic on the petitioners' systems:

Held, that they had no *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they show no injury arising to them under the bill; (2) they suggest that the Bettws extension railway and the Dyffws junction railway will be used for the purpose of obstructing communication between the Bala and Festiniog line and the slate quarries, but they show no such interests in that communication, (3) disclose no such case of competition or obstruction, and (4) have no such property or interest in the Dyffws branch as entitles them to be heard.

Granville Somerset, Q.C. (for petitioners): The Great Western, the Bala and Festiniog, and the Festiniog and Blaenau form one continuous chain of rail, and are the means of communication between the slate quarry districts and the central and southern parts of England. The effect of the bill will be to obstruct this communication. The limits of deviation of the bill embrace a portion of the Festiniog and Port Madoc railway which joins the Blaenau and Festiniog; this will enable the promoters to

stop up our access to the Festiniog and Port Madoc railway. We say that the proposed railways have not been devised to meet any existing want or to supply additional accommodation to the Festiniog slate district, in which they are situated, but to obstruct the existing railway communication with the slate quarries, and to secure to the London and North Western as far as possible a monopoly of the slate traffic.

Rodwell, Q.C. (for promoters): The Great Western and the Bala and Festiniog wish to ride on the back of the Festiniog and Blaenau in order to get a *locus standi*. But the Festiniog and Blaenau railway have no *locus standi*. We do not propose to take a yard of the Festiniog and Port Madoc railway. We only propose, instead of exercising the powers we possess over that line, to make a line of our own. No question of competition or obstruction can possibly arise in the case of the petitioners. The Festiniog and Port Madoc railway company petition, and we do not object to their *locus standi*. We do not interfere with the Festiniog and Blaenau.

Somerset: Your powers over the Festiniog and Port Madoc line will enable you to block us from going over it.

The CHAIRMAN: You have no statutory running powers over that line?

Somerset: No.

Rodwell: The petitioners can still run over it as before.

Locus standi Disallowed.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Martin & Leslie.

LONDON, CHATHAM, AND DOVER RAILWAY BILL.

Petition of (1) LONDON, BRIGHTON, AND SOUTH COAST RAILWAY COMPANY; (2) CRISTAL PALACE AND SOUTH LONDON JUNCTION RAILWAY COMPANY.

4th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Railway—Loop-line—Back Shunt—Removal of—Improvement of Existing Communication—Rival Routes—Competition—Diversion of Traffic—Loss of Toll—Direction of Traffic—Division of Territory—Affiliation—Integral part of undertaking—Worked, but not fused—Arbitration—Awards—Rights under—Maintenance and Working—“Actual Cost”—Improvement v. Injury.

The claim of a railway company to improve its own line without opposition from other railway companies depends, to some extent, on the effect which such improvement will have upon the interests of those companies.

Where a company proposed to construct a loop-line a few hundred yards in length between two existing lines of railway in its own hands, ostensibly to get rid of a back-shunt at Beckenham, and two railway companies petitioned on the ground that the effect of the loop-line would be to give the promoters a new and competing line with them, by enabling traffic to avoid the station at Beckenham, as to the use of which there were existing statutory restrictions :

Held, that both companies were entitled to a hearing; though the promoters claimed (but had never exercised) the power of running competitive traffic, *via* Beckenham, and denied that the existing statutory provisions had the meaning attributed to them by the petitioners.

A branch railway company, whose line has been treated by Parliament and by arbitrators as "an integral part of the undertaking" of the parent railway company for the purposes of maintenance and working, may nevertheless be heard against a bill promoted by the parent company for the improvement of its own line, if it can be shown that the proposals of the bill in the spirit, though not in the letter, vary the conditions of the arbitrators' award, and place the branch railway company relatively in a worse position.

This was a bill (*inter alia*) for enabling the London, Chatham, and Dover company to construct a loop-line a few hundred yards in length at or near Beckenham, between two railways forming part of their system. The proposal was resisted—first, by the Brighton company, who feared that the promoters, having already control of the High Level route to the Crystal Palace, would, by means of this loop, immediately or ultimately, compete with them for traffic to the Low Level station also; and, secondly, by the Palace railway company, as inconsistent with their interests and rights, their line forming part of the High Level route, and being required, under the Salisbury-Cairns award, and an Act of 1869, to be worked by the Chatham and Dover company "as an integral part of their undertaking." The Brighton company also objected to possible diversion from the high level route, being entitled, under various statutes, to a proportionate toll upon traffic traversing a particular section of that route. The promoters, on the other hand, contended that the insertion of the loop between lines of their own, which were distinct from the Brighton or the Palace railways, would be a mere "improvement of their own undertaking" which they had a perfect right to effect.

The *locus standi* of the Brighton company was objected to, because (1) no lands, &c., of theirs were taken; (2) the junctions proposed were with the railways of the promoters and not of the petitioners; (3) their effect would be merely to shorten an existing communication; (4) no sufficient competition would be thereby caused; (5 and 6) there was nothing in the existing arrangements between the companies or (7) in the proposals themselves that ought to restrain the promoters or give a *locus* to petitioners according to practice.

The *locus standi* of the Palace railway company was objected to, because (1) no lands, &c., of theirs were taken; (2) no rights, &c., affected; (3) the loop-line merely connected existing railways of the promoters and shortened the communication; (4) there was nothing in the facts set forth entitling petitioners to be heard; (5) the loop-line was neither designed nor calculated for unfair competition, and the promoters would still be bound, under the Arbitration Act, 1869, and the awards, to work the Palace railway as an integral part of their own undertaking; (6) on no grounds whatever could the petitioners seek to prevent the promoters from improving their undertaking, and increasing the accommodation of the public; (7) for alleged grievances irrelevant to the issue raised by the bill, the remedy of the petitioners, if at all, was at law.

Venables, Q.C. (for Brighton company): The construction of this loop-line will give the promoters a new and competing route to the Crystal Palace, in violation of existing arrangements under statute. They can now take traffic to the Low Level station from Beckenham and places to the east of that station, but not from other places, *e.g.*, from London *via* Beckenham. The insertion of this loop virtually gets rid of the restriction, as the traffic from London will avoid entering Beckenham station altogether. Traffic carried to the Palace by this route will be doubly injurious to us, for we shall lose the toll that would be payable if it went, as at present, by the High Level route.

Pembroke Stephens (for Palace railway company): All Crystal Palace traffic upon the Chatham and Dover system passes over our line now, whereas, under the bill, it may be taken away from us, and round by Beckenham. If active competition be thus established with us by the Chatham and Dover company, how can it be said that we are worked by them "as an integral part of their undertaking?" Though worked by, we are not fused with them, being entitled under the awards to all the receipts upon our own line beyond "actual cost" of maintenance and working, and we are driven by the Chatham and Dover company to arbitration each half-year to discover what "actual cost" means, and to recover what we can. We complain of want of good faith on their part; and, moreover, that Parliament is asked by the promoters to decide and to vary the substance of the awards, without having, as the arbitrators (Lords Salisbury and Cairns) had, "regard to all the circumstances of the case." All the revenue from the Crystal Palace traffic passing over the loop-line, will virtually come out of our pockets and go into theirs, and we exist only for the purposes of Crystal Palace traffic.

They may improve their own line to our injury (*Birmingham and Halesowen Railway Bill*, 2 Clif. & Steph. 273); and when improved, being the workers of both lines, they can direct the traffic by whichever route they choose.

Round (for promoters): We read the existing Acts as to Beckenham differently, and contend that we have the right (though not hitherto exercised) of carrying traffic from London to the Low Level station via Beckenham. Hence, we shall merely get rid by the bill of an inconvenient back-shunt at Beckenham. We shall deal purely with our own traffic, and interfere only with our own lines, those of the petitioners lying, in each case, a long way off. The power to compete for Crystal Palace traffic exists already; it will simply exist in a more convenient and efficient form. But if the petitioners deny our legal right to run to the Low Level station at present, there is nothing in the bill to give us any additional legal right, and so they cannot be harmed. As to the Palace railway company, they were parties to the arrangement made under the Arbitration Act and awards, very largely at their own request. They would be glad now to improve their position; but that is not a ground of *locus standi*. So long as they continue to be worked by us, as an integral part of our undertaking, they can have nothing to say. If we fail to do this, they will, of course, have their remedy. How can "an integral part of the undertaking" be heard against the undertaking itself?

The CHAIRMAN: They say that they are only "an integral part" in a certain sense—as to working, not fusion.

Round: Granted. But they cannot have, as an integral part, preferential rights in particular traffic; or a claim to restrain us from improving the undertaking as a whole.

The CHAIRMAN: You are now applying for Parliamentary powers to effect the improvement of which they complain?

Round: Unless the improvement touches, or really interferes with, their own property, the petitioners have no right to complain. Otherwise, merely because we happen to work them, our hands would be tied for all time.

The CHAIRMAN (after deliberation): The *locus standi* of both the petitioning companies is *Allowed*.

Agents for Bill, *Martin & Leslie*.

Agents for Brighton Company, *Dyson & Co.*

Agents for Palace Railway Company, *Sherwood & Co.*

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY BILL.

Petition of (1) TRUSTEES OF THE STOCKPORT AND WARRINGTON TURNPIKE ROADS; (2) THE ALTRINGHAM LOCAL BOARD OF HEALTH.

27th April, 1874.—(Before Mr. H. C. RAIKES, M.P., Chairman of Ways and Means, in the Chair; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Railway—Turnpike Road Trustees—Road Authority—Level Crossing—Inconvenience of, Increased—Vagueness in Bill—New Station—Apprehended Injury from—Too Remote—Previous Legislation—Practice—Separate Petitions, Disclosing same Grievance—Distinguished by Court—Alternative Locus Sought.

Against a railway bill, two sets of petitioners claimed to be heard, (1) the local authority of the district, and (2) trustees of a turnpike road over which there was an existing level crossing used by the promoters; both petitioners complaining that the bill would repeal section 39 in a previous Act for the construction of a station near the level crossing, and would enable the promoters to take land farther from it for the erection of a new station, so that, if the new station were substituted for the one now authorised, the company's trains would run over the level crossing at greater speed, and the public inconvenience and danger would thereby be increased:

Held, that as the bill did not in terms provide for the construction of a new station, and as it did not appear, therefore, that any new injury would result to the petitioners, they were not entitled to go before the Committee to complain of possible injury, or of existing legislation.

(*Per Cur.*) The mere apprehension of injury arising from vagueness in the wording of a bill affords no adequate ground for a hearing; there must be some specific provision in the bill injuriously affecting the interests of a petitioner in order to entitle him to a *locus standi*.

Where two sets of petitioners, having substantially the same case, ask that a *locus standi* should be granted at the discretion of the Court to either of them, the Court will not allow the defects of one petition to be supplemented by the other, but will distinguish between the allegations in both, and decide which of the two petitioners, if either, is to go before the Committee.

The *locus standi* of (1) the trustees of the Stockport and Warrington turnpike road was objected to, because (1) no lands, &c., of the

will be taken; (2) they are not the municipal or other authority having the local management of any town affected by the bill; (3) the level crossing about which they complain will not be altered; (4) they admit that they have put the Board of Trade in motion on the subject of the level crossing, but the Board of Trade do not concur in their views, and they now come to Parliament; (5) no grounds exist for a hearing according to practice.

The *locus standi* of (2) the Altrincham local board of health was objected to, because (1) no lands, &c., of theirs are taken; (2) they will not be injuriously affected as the local authority of Altrincham by the proposed taking of lands at Altrincham, or the repeal of section 39 of the Manchester South Junction and Altrincham Railway Act, 1845; (3) the level crossing complained of has been already considered by the Board of Trade, and is irrelevant to the bill; (5) there are no grounds for a hearing according to practice.

Round (for both petitioners): If the Court admits either of the petitioners, I shall not ask for a *locus standi* for both. The promoters propose to withdraw the clauses in the bill against which our opposition is directed, but I take the bill as it stands. Petitioners (1) are the duly constituted road authority over the turnpike road, which is crossed on the level by the company's railway close to the existing station at Altrincham. The traffic both on the road and the railway has largely increased of late years, and is still increasing. We have frequently represented to the company the danger caused by the present level crossing, but they have taken no notice except by erecting a foot-bridge, so inconvenient as to be little used. The bill, if passed, will greatly aggravate the existing inconvenience and danger, because, under it, the promoters are trying to take land for a station further from the level crossing than the present authorised station; and, having a greater distance to run in, the trains will pass over the level crossing at a greater speed than at present. We, therefore, claim to oppose the bill in order to defeat the compulsory power of taking these lands for making this new station. The other petitioners (2) allege that, as the Altrincham local board of health, they will be injuriously affected in that capacity by the bill. They then set forth the inconvenience caused by the level crossing, and state that they have done all they can to remedy the evil.

Mr. RICKARDS: Is the road under the jurisdiction of both petitioners?

Round: Supposing the tolls not to be sufficient for the repair, it would revert to the local board, but at present it is vested in the turnpike trust.

Hoskins, Parliamentary Agent (for promoters): Mr. Round is trying to make one good petition out of two bad ones.

Round: I am not obliged to elect absolutely upon which petition I will go; on one only I ask for a *locus standi*.

Mr. RICKARDS (to *Hoskins*): We shall see that each petition stands by itself and shall decide upon which petition, if either, counsel is entitled to be heard.

Round: The bill will repeal a section in a previous Act, which provides that a station shall be built in a certain field. We have a right to go before the Committee to see what the promoters mean to do with the land they seek to take.

Hoskins: That station has never existed.

Round: In the event of the bill passing, the traffic over the level crossing will be different to what it has hitherto been.

Mr. RICKARDS: There is nothing in the bill about the construction of a new station, which you say you apprehend?

Round: No; but the promoters want to take the land. There is a vagueness about the bill, and we want to go before a Committee to see what the promoters mean.

Mr. RICKARDS: You cannot ask for a *locus standi* except against something expressed in the Bill. There must be some positive provision in the Bill which will injuriously affect your interests. The onus is upon you to make this out to our satisfaction.

Round: I submit that special circumstances arising out of the vagueness of the bill entitle us to go before the Committee.

The CHAIRMAN: We do not see any special circumstances here. The *locus standi* of both Petitioners is Disallowed.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agents for Petitioners, Milne, Riddle & Meller.

MEDWAY DOCKS BILL.

Petition of (1) INHABITANTS OF THE CITY OF ROCHESTER AND NEIGHBOURHOOD; (2) INHABITANTS OF THE CITY OF ROCHESTER BY THE MAYOR AND COMMITTEE.

8th June, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Practice—Separate Petitions—Same Parties Signing both—Authority to Sign Petitions—Given by Public Meeting—Exercised by Mayor as Chairman—Committee to oppose Bill—Second Petition signed by—Not Authorised—Petition ultra vires.

Docks—Extension of Time Bill—Town Injuriously Affected—By Non-Completion of Docks—Prospective Benefit from Construction of Works—How far a title to *Locus Standi*—Public Meeting—Municipal Corporation—Representation—S. O. 135—Right of Inhabitants to Oppose, under.

A dock company who, in 1866, were authorised to construct docks at R., obtained statutory powers in 1869 and 1872 extending the time for completion, and now sought for a further extension. The bill was opposed by two sets of petitioners purporting

Page 1: The corporation of Rochester are the proper parties to appear for the wards in S. C. 135 enabling inhabitants to be heard, especially in places where there is no municipal or town authority. Petition (1) is the only petition emanating from the inhabitants of Rochester; the second was not read, or adopted by the meeting, but was drawn up subsequently. The signature of the mayor to petition (1), at the meeting enhanced the authority given by the meeting; and petition (2) is a nullity. The meeting did not say, "If this petition, which you have read to us, is correct, does not answer the purpose, you may draw up another;" and therefore, neither the mayor nor the committee could afterwards sign petition (2), and call it as they do, "the petition of the inhabitants of the city of Rochester in public meeting assembled." There was no second public meeting, and the inhabitants of Rochester never heard of petition (2). If they had heard of it, we suspect that they would not have objected to it. To recognise petition (2) as a valid petition would be to open the door to great irregularity, and would recognise the right of any half dozen gentlemen

appointed "to carry out the objects" of a particular petition, to present an entirely new petition.

Locus standi of both Petitioners *Disallowed*.

Agent for Bill, *Pead*.

Agents for Petitioners, *Dorington & Co.*

METROPOLITAN BOARD OF WORKS BILL.

Petition of the VESTRY OF ST. MARY, ISLINGTON.

20th April, 1874.—(Before Mr. H. C. RAIKES, M.P., Chairman of Ways and Means, in the Chair; Sir JOHN ST. AUBYN, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Metropolitan Board of Works—Public Park—Improvement—New Road—Vestry—Representation—Distinct Interest—Right of the Public to oppose Private Bills—S. O. 135—Metropolis Management Act, Section 144.

A bill promoted by the Metropolitan board of works, which sought (*inter alia*) to construct a new road skirting Finsbury Park, was opposed by the vestry of St. Mary's, Islington, who, without disputing that in ordinary cases they were precluded, as constituents of the board, from opposing bills promoted under the common seal, claimed to be heard on behalf of the parishioners and the public using Finsbury Park which, as they alleged, would be injured by the construction of the proposed road:

Held, that no distinct interest was shown by the petitioners, and that, being constituents of the Metropolitan board, they were not entitled to be heard.

(*Per Cur.*) "The public" have no *locus standi* to oppose a private bill before a Committee; they must oppose it in Parliament. Some special interest must be involved in order to give a petitioner a *locus standi* in Committee.

The *locus standi* of the petitioners was objected to, because (1) the Metropolitan board of works and not the vestry are the authority for the local management of the metropolis; (2) they are represented by the board to which they elect members, and they have no interests distinct from those of the other parishes and districts in the metropolis against a bill promoted by the board under their common seal; (3) they do not allege they are injuriously affected; (4) their petition is really directed against the

powers sought in reference to Finsbury Park, and a new road to be made in connection therewith, but they are not entitled to be heard on this ground, and there is nothing in the bill specially affecting their parish; (5) no grounds exist for a hearing according to practice.

Layton, Parliamentary Agent (for petitioners): The preamble of the bill alleges, among other things, that by the Finsbury Park Act, 1857, the Metropolitan board of works were empowered to make a park called Finsbury Park; and clause 6 proposes that the board shall construct a new road skirting Finsbury Park on the northern and western sides. Clause 8, incorporates certain sections of the Finsbury Park Act, and clause 9 repeals several provisions of that Act. We contribute to the expenses of the park which has now been open for several years; and we shall have to contribute towards the cost of making this road.

Mr. RICKARDS: Is the park in your parish?

Layton: No. I admit that we should have no *locus standi* if the question were one arising out of the Metropolis Local Management Act, but we are now dealing with a distinct statute applying only to a park for the enjoyment and recreation of the public. We, as the vestry of St. Mary, are the sanitary authority representing the inhabitants and general public. The Court may, at their discretion, admit us under S. O. 135, and, if we do not appear, the public cannot otherwise be heard to protect the park from the injury, which we say it will sustain under the bill.

Mr. RICKARDS: The public have no *locus standi* before a Committee against a private bill. They must oppose it in the House of Commons. Some special interest must be involved in order to give a petitioner a *locus standi*.

Rodwell, Q.O. (for promoters): This is a bill to carry out certain improvements connected with Finsbury Park, the Metropolitan board of works, of which the petitioners' parish is a constituent portion, having decided that these alterations are necessary. We take no fresh powers, but, if we did, the petitioning vestry are represented by us, and have no *locus standi*. It is a case fully within section 144 of the Metropolis Management Act. The petitioners are out of court on the authority of numerous cases. (*Metropolitan Street Improvements Bill*, 1872, 2 Cliff. & Steph. 264.)

The CHAIRMAN: The *locus standi* of the Vestry of St. Mary's, Islington, is *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *Layton*.

MIDLAND RAILWAY (ADDITIONAL POWERS) BILL.

Petition of (1) the GREAT NORTHERN RAILWAY COMPANY.

13th May, 1874.—(Before Mr. BRISTOWE, M.P., in the Chair; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Railway—Extension—Competing Company—Access to Town—Apprehended Obstruction to—Alternative Relief—Running Powers—Pending Bill of Petitioners—Alternative Scheme, not Matured—Alleged Interference with—Projected Lines not before Parliament—No Ground of Locus—Previous Acts.

This was a bill to authorise, *inter alia*, the construction by the Midland company of further railway communications in and around the town of Burton-on-Trent, where the company had already a net-work of lines. The Great Northern, who were able to enter Burton by means of running powers over other lines, claimed to be heard against the bill, alleging that the proposed railways would obstruct the entrance into Burton which they contemplated hereafter, and would practically exclude them, and that, if the bill passed, they ought to have running powers over the proposed lines. They did not, however, show any interference with any of their own lines now existing or projected by any pending bill:

Held, that the apprehension of prospective injury was too remote to give the petitioners a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no works, lands, &c., of theirs are taken; (2) the bill does not interfere with any powers already conferred upon them by Parliament, or sought by them in the present session; (3) no such interest in the objects of the bill is disclosed as entitles them to be heard.

Penber, Q.C. (for petitioners): By the Great Northern railway (Derbyshire and Staffordshire Act), 1872, we obtained power to make certain lines for the purpose of connecting our railway with the North Staffordshire in the neighbourhood of Burton, our express intention being to obtain access to Burton and give to brewers and other traders there communication with the Midland and Northern counties served by our railway. By the same Act we were also authorised to enter into agreements with the London and North Western and North Staffordshire companies for the reciprocal use of their undertakings, with the same object of obtaining access to Burton. In pursuance of this policy, we are now promoting a bill for making short branch railways at Burton, and for acquiring land to construct a large station on the outskirts of the town. The Midland are, by their present bill, seeking power to make extension lines around Burton, which is already intersected in various places by their lines. The construction of the new lines will render it very difficult for us to get access to the town, and, in fact, will practically exclude us. We contend that no lines ought to be authorised which will tend

to deprive Burton of the freest access to our railway; but if Parliament does see fit to sanction the lines now proposed, we claim running powers over them, and also over the various lines belonging to the Midland to the breweries of Burton. Parliament has decided that we shall be in Burton to compete for the brewery traffic, and these new Midland lines have been planned with a view to cramp our competition. We ought, therefore, to be heard either against the construction of these lines or to obtain facilities over them.

Fenwick, Q.C. (for promoters): The claim of the petitioners to be heard is first of all on rights they have now, not on rights which they seek to acquire this year. They do not allege that their present means of access to the town, either by their running powers over the North Staffordshire or by their connection with the Midland, for which they are this year promoting a bill in Parliament, will be rendered less convenient or less effective. They do not even allege that they are proposing other lines into Burton, and they call to be allowed a *locus standi* because they may hereafter propose lines over the ground which will be occupied by the proposed lines. Parliament never allows an alternative scheme to be set up for which plans and sections are not deposited. In the event of the bill being passed, the petitioners ask for running powers over the various lines of the Midland. A company cannot give themselves a *locus standi*, when they are in no way interfered with by merely asking for running powers over another railway; otherwise any railway company could obtain a *locus* against any other railway company whenever they came to Parliament.

Locus standi Disallowed.

Agents for Petitioners, *Dyer & Co.*

Petition of (2) GREAT ASCOATS FLAX AND HEMP SPINNING COMPANY (LIMITED).

*Railway—Level Crossing—Municipal Corporation assenting to—Obstruction of Street—Inconvenience—Occupiers—Local Authorities—Direct Interest—Representation—Bill Promoted *pendente lite*—Indictment—Point of Law Reserved.*

The petitioners claimed to be heard against clause 14 of the bill, which sanctioned a level crossing already made by the railway company across a public street in M., in or near which the petitioners were occupiers. The crossing had become a public nuisance for which, on the prosecution of the petitioners, the promoters had been indicted at the assizes and found guilty, a point of law as to their liability being reserved for consideration by the Court of Queen's Bench. It was alleged

that the bill, pending litigation, would prejudice the legal status of the petitioners. On the other hand, it was argued that, as clause 14 would not be retrospective, and could only authorise the maintenance of the level crossing from the time of the passing of the bill, it could not affect the rights or position of either party upon the indictment. The promoters also contended that the corporation of M., as the road authority, were the proper parties to petition. The petitioners replied that the corporation of M. had already sanctioned the level crossing by agreement with the promoters, and that there was no one, therefore, to protect the public interests:

Held, that the petitioners had no *locus standi*.

The petition was directed against clause 14 of the bill, which authorised the promoters to lay down and maintain a level crossing over Great Ancoats Street, in Manchester, between the goods' station of the company and a mill called Blairs Mill, of which the petitioners were the tenants, and the promoters the landlords.

The *locus standi* of the petitioners was objected to, because (1) they are not a local or other authority having the control or management of Great Ancoats Street, nor have they any interest in it entitling them to be heard; (2) the allegations as to the litigation between the promoters and petitioners in respect of that street, even if true, do not entitle them to a hearing according to practice.

Gorst (for petitioners): The company have already laid down the rails, and now ask Parliament for authority to maintain them. Upon indictment by us they have been found guilty at the Manchester assizes, subject to a point of law as to their liability, reserved for the consideration of the Court of Queen's Bench. We petition in two capacities, first, as occupiers of the mill, on the ground that they have blocked up our access to it; and, secondly, as prosecutors of the company in the case now pending, on the ground that, having obtained a verdict in our favour, subject to the opinion of a superior Court, that decision should not be prejudiced by the bill. The indictment was for a nuisance to the highway, and the only ground upon which the company can now dispute our *locus standi* is, that the street is a public street, and that therefore the proper parties to petition are the corporation of Manchester. But the corporation do not petition, because they have entered into some agreement with the company.

The CHAIRMAN: How does this fact give you a special title to appear better than that of every other person in Manchester?

Gorst: The pending litigation with the company respecting this crossing, and the agreement between the company and the corporation, put the case on an exceptional footing. We are a

portion of the public injured by the blocking up of Great Ancoats Street, which forms the only access to our mill, and we complain that the level crossing across this street is used by the company at all hours of the day to our detriment. As to the legal proceedings now pending, we have rendered ourselves liable for the costs, and we have a right to be heard to see that our legal position is not prejudiced by this legislation.

Venables, Q.C. (for promoters): The corporation are the proper persons to protect the road affected by the level crossings, but, far from objecting, they have given us license, as far as they could, to use the road for the level crossing, they themselves laying down the rails upon payment by us. The petitioners are merely frontagers to the street. The *North London Railway* case [*infra*, p. 110] is in my favour. If the street authority petition against the stopping up of a public street, private persons cannot also appear; and the same principle applies where, as here, the street authority are satisfied as to the public safety. The corporation of Manchester agree with us that proper precautions are taken; and that is as though the corporation petitioned. As to the pending legal proceedings, they cannot give the petitioners a right to be heard. If it were so, any person might get a *locus standi* by instituting legal proceedings against a company. This bill cannot affect the costs of proceedings which began before it was promoted, nor the merits of the litigation. The effect of clause 14 will not be retrospective, but will only authorise the maintaining of this level crossing from the day the Act passes.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Chester & Co.*

MONMOUTHSHIRE RAILWAY AND CANAL BILL.

Petition of FREIGHTERS ON CERTAIN RAILWAYS.

7th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Practice—Partners—Signatures to Petitions—Individuals Signing on Behalf of Firms—Objection to, Withdrawn—Railway—Alteration of Existing Route—Freighters—Substituted Lines—Existing Tolls Extended to—Former Act—Misfeasance Alleged, of Railway Company—Previous Legislation—Assented to under Misapprehension—Attempt to Re-open.

The bill sought, *inter alia*, to substitute two new lines for part of an existing railway, and to charge on the substituted lines the rates sanctioned by an Act of 1861 upon

the existing line. The petitioners, who were freighters using the existing route, claimed to be heard against this proposal, and so far their *locus standi* was admitted. But they also claimed to be heard on the ground that the tolls upon other portions of the promoters' undertaking were excessive, and that the Act of 1861, which sanctioned these tolls, had been assented to by them under a misapprehension of its effect upon questions since decided adversely to them in a court of law:

Held, that as the bill did not touch the questions at issue under the Act of 1861, the petitioners were not entitled to be heard in complaint of past legislation, nor upon allegations of past misconduct on the part of the company, and that their *locus standi* must be limited to the clause in the bill relating to tolls and charges on the proposed new lines.

Certain individuals signed a petition "for or on behalf of" their respective firms. It was objected that these individuals had no authority from their co-partners to sign a petition to Parliament, and that the signatures neither represented the firms in question nor the individuals, who did not sign on their own behalf. The petitioners offered evidence to show that the persons who had thus signed the petition were in the habit of signing for their respective firms in business transactions, and, at the suggestion of the Court, the objection was withdrawn.

The *locus standi* of the petitioners was objected to, because (1) the signatures of individuals, who petition on behalf of certain firms, are insufficient, and not according to the rules of Parliament; (2) the statements of the petitioners as to the tolls and charges payable on the undertaking of the promoters, and disputes arising out of them between the promoters and petitioners, do not give the latter any right to be heard; (3) such petitioners as have rightly signed the petition can be heard on their allegations dealing with the tolls, &c., to be charged on railways 5 and 6, which are new railways to be constructed by the promoters in lieu of certain portions of the existing railway; (4) the petitioners seek to revise the tolls and charges upon the undertaking of the promoters, and suggest that running powers should be given to the Brecon and Merthyr railway company over the promoters' undertaking between Bassaleg junction and Newport, but they cannot be heard upon these allegations; (5) their *locus standi* ought, in any case, to be limited to their objections to tolls and charges upon railways 5 and 6.

Littler, Q.C. (for petitioners): As to the preliminary objection, I have a witness who can prove that the signatures of the persons who sign the petition on behalf of their respective firms are always received in contracts for freight and everything else.

Mr. RICKARDS (to Granville Somerset): Is it worth while to insist upon the objection?

Granville Somerset, Q.C. (for promoters): Although I think that previous decisions of the Court justify us in making this objection, I will not insist upon it.

[*Objection withdrawn.*]

Littler: The petitioners are the principal freighters on the railway extending from Bassaleg to Newport, and for the most part had their waggons at the collieries situate on that railway. We set out a number of grievances in our petition, the chief one being that, under the Monmouthshire Railway and Canal Act, 1861, the rates allowed to be charged, as we contend, were to include "stoppage," while the company contend that they have a right to add a sum of one penny per ton for stoppage, and have compelled us to pay that charge. The question is, when a railway company charged with serious misfeasance comes for fresh powers, ought not parties who complain as we do to be allowed a hearing against the grant of existing powers of the same nature?

Mr. RICKARDS: We do not consider that any allegations of past misconduct on the part of a company afford a ground of *locus standi*.

Littler: The promoters propose to construct two new railways (Nos. 5 and 6) in lieu of part of the existing railway between Bassaleg and Newport, and to apply to the new line the tolls charged on the existing railway. We submit that the existing charges are exorbitant in amount and based on erroneous principles, and should not be extended to the new lines, 5 and 6. We also allege that the tolls and charges upon the company's railways ought to be revised, and the maximum rate in the Act of 1861 amended, so as to carry out what we say was the real intention of the Legislature respecting "stoppage" and other exceptional charges. No doubt the promoters will say that the maximum rate was fixed by the Act of 1861, to the terms of which Act we were parties, and that we have already disputed the question in a court of law without success; but as we can get no remedy at law, and it is clear that we made a bargain with the promoters in 1861, being then under a complete misapprehension as to the terms of the Act, we ought to be allowed to go before Parliament as the only tribunal which can give us relief. If the contract had not been embodied in an Act of Parliament, we should have been entitled to rectify it in a Court of Equity, so that it might carry out the intention of the parties.

The CHAIRMAN: Does the bill touch this dispute?

Granville Somerset: Not in the least. We concede the *locus standi* of the petitioners against the new lines and the tolls on those lines.

Littler: We ask that the provisions of the Act of 1861, prescribing the maximum rate, should be amended, as we were under a misapprehension when we consented to these provisions.

Mr. RICKARDS: You want, in fact, to amend an existing Act of Parliament?

Littler: Yes. We wish to ask Parliament what we should be able to ask a Court of Equity. We also ask that running powers should be given in the bill to the Brecon and Merthyr railway company over the railway from Bassaleg junction to Newport, upon terms to be agreed upon between the company and the promoters, or settled by the Board of Trade.

Mr. RICKARDS: The Brecon and Merthyr do not ask for these running powers?

Littler: They cannot ask for them: they would have no *locus standi*.

Mr. RICKARDS: *A fortiori* you are not entitled to ask for them. I think you must be satisfied to be heard about the tolls, upon the *locus standi* conceded to you by the promoters.

Somerset was not called on to reply.

The **CHAIRMAN:** The *locus standi* of the Petitioners is *Allowed* against Clause 20 of the bill, so far as it affects Railways Nos. 5 and 6.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Sherwood & Co.*

MUSSELBURGH AND DALKEITH WATER BILL.

Petition of the EDINBURGH AND DISTRICT WATER TRUSTEES.

11th May, 1874. — (Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Water Companies—Compulsory Purchase of Lands—Completion of Works—Extension of Time for—Rival Scheme Pending—Same Source of Supply—Interference with—Competition—Reciprocal Locus Standi—Res Judicata—Renewed Powers sought—Question Re-opened de novo.

A bill was promoted by water trustees, extending the time for compulsory purchase of lands and completion of works, the period limited for the exercise of these powers in their Act of 1871 not having yet expired. The petitioners, who were also water trustees supplying a neighbouring district, contended that the bill re-opened the question *de novo*, and that, as they had a rival scheme now before Parliament, seeking to supply part of the promoters' district, they were entitled to be heard as a competing company. Against this rival scheme the present promoters had petitioned, and their *locus standi* was conceded. It was urged on behalf of the promoters that by the legislation of 1871 the question of the powers

now sought to be extended was *res judicata*, and that the bill afforded no ground for a fresh hearing:

Held, that the petitioners were entitled to be heard.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken or rights interfered with; (2) neither they nor the promoters are parties to an agreement referred to in the petition, nor is such agreement affected by the bill; (3) no grounds for a hearing exist on the score of competition; (4) the petitioners cannot be heard according to practice.

Clerk, Q.C. (for petitioners): The Musselburgh and Dalkeith water trustees, who are the promoters of the bill, got statutory power to take a supply of water from the South Esk in 1871, but nothing has been done under their Act. We are this year promoting a bill enabling us to carry a line of pipes to Edinburgh from the same source of supply. The question, therefore, is whether, where a company, or body of trustees, possessing statutory powers which they have not exercised, ask Parliament to extend the time for using those powers, parties who have a scheme before Parliament to take water from the same district can oppose that extension of time. Against our bill the promoters have petitioned. We have conceded their *locus standi*, and we anticipated that in like manner they would concede us a *locus standi* against their bill. If both had been coming to Parliament for the first time, either would have been heard against the other's competing scheme.

Mr. RICKARDS: When will the time expire?

Clerk: The time for compulsory purchase expires in 1875; the time for completion of works expires in July, 1876. If, having been in possession of the powers, the promoters had allowed them altogether to expire, or had allowed the time for purchase to expire, there can be no question that, upon an application to revive these powers, any person asking that he might occupy the same ground would be allowed a hearing. (*Bristol Port and Channel Dock Bill*, 2 Cliff. & Steph. 120.) There is a very small difference between this case and the one supposed. The promoters are now asking Parliament to extend their original powers, though they have still a year to run. Can any distinction be drawn between a case in which the powers have expired, and a case in which they are on the point of expiring?

Gloag, Parliamentary Agent (for promoters): The petitioners, it is true, have admitted our *locus standi* against their bill, but they could not do otherwise, for by clause 24 of their bill, the Edinburgh and District water trustees are seeking to supply part of our district. By the Musselburgh and Dalkeith Act of 1871 the whole gathering ground of the South Esk was given over to us. It also belongs to us geographically, according to the definition of the Royal Commissioners on Water Supply in 1869. The petitioners will be able to discuss this question thoroughly upon their own bill. It is not true

that we have done nothing under our Act of 1871. We have obtained estimates, made agreements with landowners, and spent a large sum. The rise in the price of materials has rendered our borrowing powers insufficient, and has caused delay in constructing the works. We now come to Parliament merely to extend the time for executing works, and for further borrowing powers.

Locus standi Allowed.

Agent for Bill, *Gloag.*

Agents for Petitioners, *Grahames & Wardlaw.*

NORTH EASTERN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of (1) BOLCKOW, VAUGHAN AND COMPANY (LIMITED).

29th April, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICHARDS.)

Abandonment of Railway—Mine Owners—Traders and Freighters—Single Trader—Representation—Ironstone Pits—Connected with Railway—Branch Lines and Sidings—Expenditure on Faith of Maintenance of Line—Injurious Affecting—Agreement—Increased Mileage—Alteration of Status—Evidence.

This was a bill, *inter alia*, enabling a railway company to abandon a certain extension line authorised by an Act of 1861. The petitioners, who had extensive ironstone pits near the extension line, and had incurred considerable outlay on branch lines and sidings to connect themselves with the company's system, claimed to be heard on the ground that they would be injuriously affected by the substitution of a longer route for the railway to be abandoned. It appeared that this line had long been disused, but as the railway company had hitherto obtained no statutory power to abandon it, they had been in the habit of charging tolls, under agreement, according to the mileage of the extension line (9 miles) and not for the 11½ miles of the actual route. The petitioners complained that this agreement would be put an end to if the extension line, though not now an available route, were abandoned under legislative sanction, and that they would also be liable to higher mileage rates for minerals upon the longer route:

Held, that, though a single firm of traders, the injury they would sustain under the bill was of a character sufficiently substantial to entitle them to be heard.

The *locus standi* of the petitioners was objected to, because (1) the proposed abandonment affects them only as it may affect a large class of traders and freighters, and they have no right to appear to represent that class or in their own behalf; (2 and 3) for the same reason, they are not entitled to be heard in respect of tolls; (4) no grounds for a hearing are disclosed; (5) the petitioners are not interested in any lands forming part of the line to be abandoned; (6) their other allegations, if true, do not entitle them to be heard; (7) no grounds exist for a hearing according to practice.

Rodwell, Q.C. (for Messrs. Bolckow, Vaughan and Co.): The promoters propose in this bill to abandon a portion of the Cleveland and Eden Valley railway now used by the petitioners. We are owners and lessees of extensive smelting and other iron works at Middlesbrough and at Eston, and of mines and royalties of ironstone and other minerals, and we have constructed branch railways connecting our mines and works with the railway proposed to be abandoned and with the port of Middlesbrough. By the Cleveland Railway Act, 1861, section 42, we were empowered to form a junction with the extension railway (that is, the railway to be abandoned), and the company were bound to afford us all facilities for that purpose. We claim under that 42nd section certain rights of communicating with that railway. It is now proposed to take us round a longer route, and, consequently, make us pay more mileage, which the promoters will be able to do if they get legislative authority to abandon the shorter line. For some time past, the extension line has been disused, and, therefore, the North Eastern company under agreement have taken our ironstone by the longer route at the mileage of the short line; but if the bill passes, and the promoters thereby obtain legislative sanction for the abandonment of the short line, we shall be deprived of the benefit we now enjoy under the agreement. The abandonment will not deprive us of transit, but will increase the payment for it.

Bidder, Q.C. (for promoters): I deny that the petitioners have laid out money under section 42 of the Act of 1861. It is true they now have a statutory right to use the extension line in common with the rest of the public, but they have no more interest in the line proposed to be abandoned than any other person. They have never carried an ounce of traffic over the line; they are not traders and freighters upon it; nor have they incurred any expenditure in relation to it, except some which has long since become useless because the pits were worthless.

Rodwell: We do not admit that statement.

Bidder: Then call a witness to prove that it is not true.

Mr. E. Williams (examined by *Rodwell*): I am manager of the petitioners' company. We have paid several thousand pounds in dues for stone

sent from the Challoner pits upon the Cleveland railway system. We are now sending 3,000 or 4,000 tons a week, and within a year expect to be sending three or four times as much. We have paid the North Eastern company £200,000 dues altogether for stone carried over that line from the Challoner pits. We have spent upon our branch from the pit to a point on the line about £25,000, and we have made sidings. It is true that, though we made this line for the shorter route, it will serve us also for the longer; but the distance is $11\frac{1}{2}$ miles against 9, and, therefore, we shall have to pay more mileage. It would make a difference to us of something like 7d. or 8d. a ton on our ironstone. One penny a ton on our ironstone is £5,000 a year. Hitherto the North Eastern have charged the same on the longer line as if they sent our minerals by the shorter extension line, but that is by agreement, which would come to an end if this Act were passed, and then they would be entitled by the Act, under which they made the longer line, to charge us, not only for the greater mileage, but an extra $\frac{1}{2}$ d. a ton per mile. We should never have sunk the Challoner pits if we had known of this abandonment scheme.

Cross-examined by Bidder: It may be true that when we made the Challoner branch, some of the rails had been taken up on this Cleveland extension railway, which was not therefore an open route; but I assert positively that we should not have fixed the pit there if the extension railway had not been in our opinion available for bringing stone from it. We did give the North Eastern company notice to carry stone by the extension route. We took it for granted that they would only charge for the distance the ironstone would have to go by this route (9 miles); and they did consent to charge as for the short route, though they took the ironstone a longer way round. We may not have sent minerals, but we have sent materials over the line proposed to be abandoned.

Rodwell: Although there are fifty places in the neighbourhood where we might sink pits, and from them want to make a junction with the extension line, it makes no difference to our *locus standi* whether it is from one pit or fifty that we take the stone, so I am content to rest my case on the Challoner pit.

Bidder (in reply): The petitioners rest their case simply on the Challoner pit, and they suggest that they have expended money there on the faith of the maintenance of the line. That position cannot be maintained, for their expenditure was made after this line was disused.

Mr. RICKARDS: What induced the company to make the concession of taking the traffic at rates chargeable for the shorter route—for the 9 miles instead of the $11\frac{1}{2}$ miles?

Bidder: We made a special agreement with the petitioners. The distance by the short line had not necessarily anything to do with the fixing of these rates. All the petitioners have used the abandoned line for has been to carry a few pit materials.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is Allowed.

Agents for Petitioners, Durnford & Co.

Petition of (2) BELL BROTHERS (LIMITED).

Railway—Abandonment of Short Line—Traffic Sent by Longer Route—Minerals, Rates charged—Mineowners—Pit, Tramways, and Siding—Connection by, with Railway—Agreements—Works Depreciated or Useless through Bill—Mileage and Tonnage Rates, Increase of—Substituted Route—Alteration of Status.

The North Eastern railway company proposed to abandon a short extension line which had been for some time disused, but which gave to certain freighters a route 9 miles long instead of the actual route, which was $11\frac{1}{2}$ miles long. The petitioners were owners of pits connected by tramways and sidings with the promoters' railway, and alleged existing agreements, originally entered into with the predecessors of the North Eastern company when the extension line was in working order, for the conveyance of their minerals during a certain term of years at ninepence per ton, a rate computed, it would seem, upon the nine miles distance. It was contended that the abandonment of the extension line would not invalidate these agreements, and that under them the promoters would still be liable to convey the petitioners' traffic, at the ninepenny rate, over the longer route:

Held, that as, upon the expiration of the agreement, the petitioners, if the abandonment bill passed, would be deprived of their existing right of transit over the extension line, their status would be changed by the bill, and they were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, substantially on the same grounds as in the former case, and because they have no sufficient interest to entitle them to be heard against the proposed abandonment of the Cleveland railway, or on the question of tolls, &c.

(Granville Somerset, Q.C. (for petitioners): We were one of the original promoters of the line proposed to be abandoned, and we ask to be heard on nearly the same grounds as those put forward by Messrs. Bolckow and Vaughan, the difference being that we have an agreement, first of all with the Cleveland company, and then an agreement with the North Eastern company after they absorbed the Cleveland company, to carry our ore for a certain number of years at a certain price. This price, supposing the extension line to be abandoned, would be increased by a distance of two or three miles, upon which the North Eastern company would have power to charge $1\frac{1}{2}$ d. instead of 1d. per

mile, so that our loss would be £10,000 or £12,000 a year upon the present traffic. Like Messrs. Balckow, we are owners of extensive smelting works, mines, and railways, and the line proposed to be abandoned, and we have constructed branch railways and sidings to connect ourselves with that line, over which we are now entitled to have our traffic conveyed. If the abandonment of this line is anti-cipated without the insertion in the bill of proper provisions for our benefit, the company will, at the expiration of the agreement, be enabled to charge us the full maximum rate by the longest route. Our status will, therefore, be altered by the bill. *[Agreements produced.]*

Mr. RICKARDS: Is it any part of your case that you have incurred outlay?

Gratville Somerset: If we had known that this line would be abandoned we should not have opened our works, or made our tramways and junctions, or taken shares so largely in the making of the line.

Bidder, Q.C. (for promoters): The petitioners work certain pits from which they take minerals to their works at Eaton. They have been put to no expenditure of capital which has been, or will be, rendered useless by the abandonment of this line. Their siding to the mine will be as useful as ever, because they can go by the one route or the other. They rest their case on agreements, but there is nothing in the bill that invalidates the agreements. We agreed to carry the petitioners' goods on as favourable terms as we did those of any other firm, and to charge 9d. a ton for their ironstone. If the bill passes, that arrangement will still continue.

Mr. RICKARDS: The line-rate seems to be computed upon the basis of 9 miles, and the original agreement, I suppose, was with the Cleveland company when the 9-mile line was in working order?

Bidder: You must not assume that the agreement had any reference to the comparative distance of the two lines. But we are bound by our agreement. If we were to put up the rates and charge the petitioners upon the maximum route, we should be violating the agreement.

The CHAIRMAN: You are proposing to take powers, by the exercise of which the parties at the termination of their contract will not be in the same position as they are now. Their grievance is, that so long as this line exists, they have an equitable claim, which has been conceded by the company, to be charged the shorter distance rate instead of the longer one. Under the bill, when the agreement expires, they would be unable to enforce this claim.

Locus standi Allowed.

Agents for Petitioners, *Darlington & Co.*

Petition of (8) SWAN, COATES, AND COMPANY.

Railway—Abandonment Bill—Owners—Smelting Works—Consumers of Goods Carried on

Railway—Abandonment Bill—Owners—Smelting Works—Consumers of Goods Carried on

The petitioners are owners of smelting works near a line proposed to be abandoned, and they are petitioners for the insertion in the bill of provisions for their benefit. They are now charged the full maximum rate by the longest route, and they are petitioning for the insertion in the bill of provisions for their benefit.

It is their case that they have incurred outlay in making the line proposed to be abandoned, and they are petitioning for the insertion in the bill of provisions for their benefit.

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a *locus standi*; *à fortiori*, we have a good ground against a specific proposal to abandon the short line.

Captain George John Swan (called and examined by Littler): I am the managing partner of the firm of Swan, Coates, and Co. We are supplied with ironstone by Messrs. Bell from various mines owned by them on the Cleveland line. Under agreement with Messrs. Bell we are bound to accept 150,000 tons of ironstone annually from them, and that agreement has some six or seven years to run. On some of this ironstone, which Messrs. Bell have sent to us by the Cleveland line, the company have allowed us a rebate. If the promoters carry the bill, this rebate will not be allowed, and we shall also be obliged to pay more for all ironstone, as the price we pay varies with the price charged for carriage, which will be heavier by the new route.

(Cross-examined by Bidder): We guarantee Messrs. Bell a minimum profit on the ironstone they supply us with, and if after deducting carriage, the price we pay them does not allow them the minimum profit, we have to make that profit up to them, and consequently the higher the charge is for carriage, the more we have to pay Messrs. Bell for the ironstone, and the less is our profit. We have paid before now for the ironstone coming by the longer route, but hitherto we have got the rebate according to our agreement with the company.

Bidder (in reply): If people in the position of the petitioners, who are merely consumers, are to be heard on the ground that they would have to pay a third party, with whom they deal, 3d. a ton more for their ironstone in consequence of increased mileage, then any one who in turn buys the manufactured iron from the petitioners would have a *locus standi*; and if the right to *locus standi* is to be determined by amount of consumption, then the railway companies would be able to show figures which upon that principle would entitle them to be heard as consumers against such a bill.

Locus standi Disallowed.

Agents for Petitioners, Durnford & Co.

Agents for Bill, Sherwood & Co.

NORTH LONDON RAILWAY BILL.

Petition of W. J. WILSON AND OTHERS.

4th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Railway—Owners and Lessees—Stopping up Street—Neighbouring Frontagers, Injurious affected by—Road Authority—Representation—Distinct Interest—Repeal of Former Act—Remedy at Law—*Lis Pendens*—Lands' Clauses Consolidation Acts—Practice—Preliminary Ob-

jection—Allegations in Petition—Insufficiently Traversed—Cases Cited by Promoters—Reply upon, Allowed to Petitioners.

The bill sought power, for the purposes of a railway company, to stop up a street, upon which the petitioners were frontagers, although not upon the portion actually proposed to be closed. They claimed to be heard on the ground that the access to their premises would be rendered less convenient, and alleged that they were now seeking damages, on similar grounds, in an action at law against another railway company, who were acting with the promoters, but who disputed their liability under the Lands' Clauses Act. The petitioners also contended that the present bill would in effect repeal a section inserted in a former Act to preserve the access to the street in question. It was answered that they were not the proper parties to appear, and were represented by the road authorities, who petitioned, and whose *locus standi* was admitted:

Held, that the petitioners had no special grievance entitling them to be heard apart from the road authorities, and that the injury apprehended by them would properly be the subject of an action at law.

(Per Cur.) It is the practice of the Court to allow counsel for the petitioners to make observations in reply on a case cited by counsel for the promoters.

The *locus standi* of the petitioners was objected to, because (1) they have not the control or management of Sun Street, and the road authorities have petitioned; (2) section 11 of the North London Railway (City Branch Act), 1861, referred to by them has been repealed; (3) their allegations relating to the Great Eastern railway company, even if true, do not entitle them to be heard against the bill promoted by the North London railway company; (4) they have no such interest in Sun Street, or in any of the matters complained of in the bill, as entitles them to be heard.

Rodwell, Q.C. (for petitioners): The objections are not sufficiently definite. The promoters have not traversed the allegations of the petitioners, who set up a case of special injury.

Littler, Q.C. (for promoters): Our first objection is sufficiently specific, namely, that the petitioners in respect of their injury, if any, are represented by the road authorities.

Mr. RICKARDS: Then the question arises, whether they have or have not a special injury in respect of which they are not represented by the road authorities?

Little: That will be, in effect, arguing the question of *locus standi*.

[*Objection withdrawn.*]

Rodwell: We are owners or lessees of houses and property abutting upon Sun Street, and as such we object to the proposal of the promoters to stop up a portion of this street. Although we are not frontagers on the actual piece of Sun Street proposed to be stopped up, we allege that we shall be injured if this portion is closed. By section 11 of the North London railway (City Branch) Act, 1861, which authorised the promoters to construct a railway commencing at Liverpool Street and terminating at Kingsland, they were bound to provide a convenient access to their intended station at Liverpool Street from Sun Street, but no period was prescribed for doing so, and such access has not yet been provided. Meanwhile, the Great Eastern railway, by virtue of an Act obtained in 1864, have stopped up a portion of Sun Street to the eastward of the promoters' station. The road authorities and the persons interested in the street did not suppose that the bill promoted in 1864 would interfere with the street. We proceeded against the Great Eastern company under the Lands' Clauses Consolidation Acts, and a jury assessed the damage we had sustained at £1,050; but the Great Eastern company still deny their liability. The present bill, after reciting that the extension of the Metropolitan Extension of the Great Eastern railway has stopped up Sun Street and rendered traffic thereon to the eastward of the company's station impossible, seeks power, by clause 8, for the North London and London and North Western companies to stop up and discontinue part of the street as a public thoroughfare, and to appropriate some of the soil. We shall be injuriously affected if this portion of Sun Street is closed, and shall be deprived of access to the thoroughfares which the promoters and the Great Eastern company are bound by their Acts to keep open, and the existence of which the Great Eastern company themselves urged in mitigation of damages in the proceedings we instituted. At present the case between ourselves and the Great Eastern company is in the Court of Queen's Bench, the company disputing their liability under the Lands' Clauses Act.

Mr. RICKARDS: You contend in that case that you have a remedy at law?

Rodwell: Yes; but it is doubtful whether we have such a remedy.

Mr. RICKARDS: It is the Great Eastern company, not the promoters of the bill, who deny that you have a right to compensation?

Rodwell: The North London company will also deny our right, as they practically do by their first objection.

Little: We might be willing to compensate you, and yet not be willing to let you be heard.

Rodwell: If we cannot get compensation under the Act, we have a right to be heard. (*South Eastern Railway Bill, Petition of Skinners' Company, Smeth. 101.*) As to our being represented by the road authorities, it was through their negligence that power was originally obtained to stop up Sun Street.

Little (in reply): If the petitioners are heard, then anybody in a long line of street would have a right to be heard in respect of a proposal to deal with any part of that street. There is no allegation in the petition that the petitioners would suffer greater injury than any other frontagers in the same line of street. The question whether these persons are entitled to compensation being now before a court of law, I submit that Parliament will not interfere between the parties. Two cases put the petitioners out of Court. (*Midland Railway Bill, Petition of G. Lane Fox, 2 Cliff. & Steph. 108*; and (*Glasgow and Kilmarnock Joint Line, &c., Bill, Petition of Hutcheson's Hospital, Ib. 261.*) There is no case where a frontager without any special grievance has been heard. The vestry, the Metropolitan board of works, and the city commissioners of sewers of the City of London have presented petitions, and will appear against the powers of which the petitioners complain. The allegations of the petition with regard to the Great Eastern company, even if true, have nothing to do with us.

Rodwell was proceeding to distinguish the cases cited for the promoters, but

Little contended that he had no right of reply.

The CHAIRMAN: It is the practice of the Court to allow counsel for the petitioner to make observations, by way of reply, on cases cited by counsel for the promoters.

Rodwell: In the *Midland Railway* case, Mr. Lane Fox had no special rights, but here the damages given by the jury to the petitioners were diminished on the ground that they had a right to the access, which the bill will close. In the *Glasgow and Kilmarnock Bill*, there was nothing to distinguish the case of Hutcheson's Hospital from that of ordinary individuals.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

NORTH METROPOLITAN TRAMWAYS BILL.

Petition of the METROPOLITAN RAILWAY COMPANY.

14th May, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; and Mr. RICKARDS.)

Tramway—Enlarging Time for Construction—Frontagers—S. O. 136—*Res Judicata*—Extension of Time Bill—Previous Act varied by—Steam-Traction on Tramways—Substituted for Horse-power.

A bill extending the statutory time fixed for the construction of a tramway was opposed by a railway company, past whose terminal

station at Moorgate Street the tramway would run. The petitioners alleged that additional nuisance would be caused to them by delay in completing the tramway, and urged that the case of frontagers differed from that of landowners, who, after receiving notice to treat, became thereby mere creditors of the company, and could not be heard against extension of time bills. For the promoters, it was objected that any injury the petitioners might sustain was caused by the passing of the Act for constructing the tramway, and that the question of injury was, therefore, *res judicata*:

Held, that the petitioners were not entitled to a *locus standi* against the part of the bill authorising the extension of time, but that they might be heard against two clauses (5 and 6), which varied the original Act and provided for the substitution of steam for horse-power in working the tramways.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provisions for interfering with their lands or property, nor can they be affected by the proposed extension of time; (2) the construction of the tramways will not injuriously affect them in the use of their premises or their business; (3) they cannot be heard as frontagers, (4) or consistently with practice.

Cripps, Q.C. (for petitioners): The promoters got power by an Act of 1870 to construct a tramway along Moorgate Street, Finsbury Place, and Finsbury Pavement. In 1873 they obtained an Act to extend the time for its construction, and they now ask for a further extension. We allege that we shall be injuriously affected by this further extension. We are owners of lands and buildings abutting on Finsbury Pavement; our Moorgate Street station opens upon Finsbury Pavement; and it is intended to construct a large hotel there. Any delay in the construction of the tramway, which is to cross the entrance to our hotel and station, is an injury to us. If this were a bill to construct tramways in the first instance, there is no doubt we should have a *locus standi* under S. O. 136. (*London Street Tramways' Bill*, 2 Cliff. and Steph. 85; *North Metropolitan Tramways' Bill*, *Ib.* 89; *Tramways Provisional Orders Confirmation Bill*, *Ib.* 198.) It is true that a landowner who has received notice to treat cannot be heard against an extension of time bill for a railway, but the reason is because, after such notice, he is no longer regarded as a landowner but as a creditor of the company, and clauses are inserted in the general Act for his compensation; but in the absence of a notice to treat he would be entitled to be heard *de novo*. In the case of a tramway, the whole question between the frontagers and the company must

be fought out before the Committee, as the frontagers cannot obtain compensation under any general Act before a subsequent tribunal for the damages inflicted upon them. Moreover, the bill varies the legislation of 1870, as clauses 5 and 6 propose to substitute steam for horse-power on the tramway.

Tahourdin (for promoters): Those clauses are struck out.

Cripps: We must take the bill as it stands.

Mr. RICKARDS: The damage that will be caused to you by the tramway was inflicted upon you by the passing of the original bill. What damage do you suffer by the prolongation of the time for a year?

Cripps: The damage done to us is this—if the existing powers expire it will be impossible for the company to construct these tramways, and we shall be freed from the nuisance they would cause to us.

Tahourdin was not called on to reply.

The CHAIRMAN: The *locus standi* is *Disallowed*, except against Clauses 5 and 6 (as to the use of steam-power).

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

SOUTH DEVON RAILWAY BILL.

Petition of (1) TRADERS AND OTHER INHABITANTS OF PLYMOUTH.

27th April, 1874.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Practice—Withdrawal of Petitioners—Proof of Signatures unnecessary—Filing of Requisitions—Absence of Notice—Objections—Issue raised in—When Departed from—Power to Amend Objections—New Matter arising subsequent to—Demurrer—Petition equivalent to—S. O. 207 (Requisition by Petitioners to Withdraw)—Landowner—Sale of Property by, after Petition—Railway—Docks—Amalgamation—Traders—Limitation in Previous Act—Board of Trade—Right of Traders to Oppose, before—Broad Gauge Railways—S. O. 156 ("Railway Company not to acquire Docks," &c.)—Monopoly of Traffic—Access to Docks—By Narrow Gauge Railways—Substantial Interest of Traders—Representation—Evidence as to.

Against a bill for the transfer of docks at P. to a railway company a petition was presented, signed by 32 traders of P. Before the hearing, but after the objections were lodged, requisitions of withdrawal were presented on the part of 20 of the petitioners. It appeared that no notice of such withdrawal had been given to the petitioners' agent, and counsel now urged that the issue before

the Court must, according to practice, be confined to the allegations made in the petition and traversed in the objections, and that the Court could, therefore, have no cognisance of the withdrawals from the petition:

Held, that the requisitions to withdraw being filed in proper form, and being laid before the Court, the petition could only be regarded as the petition of those persons who remained as subscribers to it.

Twelve Traders of P. petitioned against a bill for the transfer of a dock to a railway company, and alleged that the bill would exclude the narrow gauge railways from the docks, thereby depriving the petitioners of facilities and establishing a monopoly in favour of the broad gauge lines. The petitioners further alleged that the bill would repeal a provision in a previous Act under which traders using the dock would have been able to oppose the transfer of the undertaking before the Board of Trade. There was no other opposition to the transfer. The promoters contended that the petitioners did not represent a substantial portion of the trade of P., and could not appear on behalf of the class:

Held, that the petitioners were entitled to a *locus standi*.

This was a bill "to confer further powers on the South Devon railway company with reference to their own and other undertakings; to vest in them the undertaking of the Plymouth Great Western dock company; and to provide for the acquisition by the Great Western railway company and the Bristol and Exeter railway company of a joint interest in the last-mentioned undertaking." The petition was signed by 32 "traders and other inhabitants of Plymouth," who alleged that, in 1873, the South Devon company entered into the arrangement with the dock company, which was scheduled to the bill. This arrangement was submitted to the Board of Trade for confirmation, but was opposed by an influential body of merchants, shipowners, and others using the docks, and the railway company were called on by the Board of Trade to answer the memorial, but they dropped all further proceedings before the Board of Trade and sought to carry out the agreement by the present bill. The petitioners further complained that the bill contained no provision enabling any narrow gauge company to take an interest in the docks; and that the effect of the bill would be to give a monopoly in these docks to the broad gauge companies, to the prejudice of the petitioners and other traders using the docks; and that the bill would abrogate a restriction contained in an Act of 1858, by which

the South Devon company were authorised to assist the dock company (then in difficulties), but with the proviso that the undertaking should not be transferred to the railway company, except after full inquiry by the Board of Trade.

The *locus standi* of the petitioners was objected to, because (1) they are not inhabitants of a town or place which will be injuriously affected by the bill; (2) they do not represent the inhabitants, or any class or number of traders and freighters, so as to entitle them to be heard; (3) they represent no such interest in the Plymouth Great Western dock, or in the traffic resorting thereto, or in the proposed transfer or amalgamation, as entitles them to be heard; (4) the bill will not, as alleged, create any monopoly in the hands of the broad gauge companies; (5) the petitioners have no interest in the bill entitling them to be heard.

Littler, Q.C. (for petitioners): The petition is signed by 32 traders, but, small as the number is, there is no other petition of traders, nor do the corporation of Plymouth petition.

Saunders (for promoters): There are not 32 petitioners; 20 out of the 32 have withdrawn.

Littler: I object to that question being raised. The Court deals with petitions as they stand. If every petitioner had withdrawn his signature, the petition would have been dead, but if a single petitioner were left, the Referees, sitting as a Court to try demurrers, would say that all they had to deal with was the petition as it stood.

[*The requisitions to withdraw signatures were here sent for.*]

The CHAIRMAN: The date of the earliest withdrawal is last Friday; many of the withdrawals are dated to-day. In the face of these requisitions, do you contend that you still appear as counsel for the petitioners in respect of whom these withdrawals are filed?

Littler: The agent for the petitioners has received no notice of the filing of the requisitions, and has no instructions other than to go on with the petition. The point not being raised in the objections, I submit that you are bound to treat the petition as if no requisitions had been filed.

Mr. RICKARDS: The promoters object, (2) that the petitioners "do not represent the inhabitants, or any class or number of traders and freighters, so as to entitle them to be heard." Is not that a sufficient objection to the petition as it stands?

Littler: It is an objection to the petition as it stood on the 8th of April, when the objections were signed.

The CHAIRMAN: We will hear counsel for the promoters on the point raised.

Saunders: It is said that, if only one signature remained, the Referees must treat that one petitioner as though he represented a class, because the objections are silent as to the withdrawal of other petitioners. Surely to do so would be to ignore the whole object for which the *locus standi* tribunal was established, namely, to save unnecessary expense. Such a petition would go before the Committee on a mere technical ground, and promoters would be put to the expense of opposing, and a Committee to the trouble of hearing, a petition which could never

be substantiated upon evidence, because the Committee could only regard it as the petition of one person. It is true we have not raised this issue in the objections, because we have only become aware of the withdrawals since the objections were lodged. But, if necessary, the Court would give us power to amend our objections in a case like this, just as a Court of common law would give power to amend the pleadings upon new matter arising subsequently. Then it is said the proceedings here are equivalent to demurrers, and the facts must therefore be admitted. But where allegations are disputed, the Court always calls for evidence. Here the formal requisitions are properly before the Court; and when names are withdrawn from a petition it is treated as the petition of those who remain. (2 Cliff. & Steph. 142.)

Little : If the objections do not allege, and could not have alleged the withdrawals, *cadit questio*; the withdrawals cannot be before this tribunal, and the Referees cannot take cognisance of the point. After objections are lodged, we cannot be called upon to answer a case set up owing to a change of circumstances unless we have some notice of such change.

Mr. RICKARDS : I do not see how any notice could have helped you; you could not amend your petition.

Little : I am entitled to assume that the petitioners withdrew their signatures under misapprehension, and if so, they might ask for the suspension of the S. O., and deposit a new petition. If the Court decides against me upon this point, I shall call on the other side to prove the signatures to these withdrawals.

Mr. RICKARDS : The House allows petitions to be withdrawn without any proof of signatures.

Little : That is upon the petitioners' own requisitions, but here the requisitions are at the instance of the promoters.

The CHAIRMAN : The S. O. (207) simply says that the requisitions to withdraw shall be considered after they have been filed, and that then the persons so withdrawing shall no longer be held to be petitioners.

Little : My main point is, that unless the issue before the Court is confined to the *status quo* at the time of lodging the objections, neither side will ever know what they have to meet.

Mr. RICKARDS : In the case of a landowner, we should not take the state of things at the time of filing the petition if we were shown that since then he had sold his property. We should then hold that he had no *locus standi*.

Little : You might say that such an act was equivalent to the withdrawal of the petition, but here some petitioners still remain. As to the argument that this tribunal was established to save cost, we must remember that petitioners who frivolously and vexatiously oppose a bill may have to pay the costs of the inquiry before a Committee.

The CHAIRMAN (after deliberation) : The Court have arrived at the conclusion that, these requisitions being filed in the Private Bill Office and laid before us, we must deal with this petition as the petition of those who remain subscribers to it.

Little : Then I have to argue that the twelve petitioners who remain represent a class. In the

preamble of the bill the promoters carefully omit all reference to the restriction in the Act of 1858. Any trader using the docks would have been entitled under this restriction to appear before the Board of Trade and oppose the transfer, but the promoters seek to deprive us of the benefit of that express provision in our favour. The position, therefore, of any trader now petitioning differs from that of traders petitioning against an ordinary bill. Again, S. O. 155 requires a committee, who pass a bill amalgamating a dock or harbour company with a railway company, specially to report their reasons, showing the intention of Parliament that the parties interested should be heard; and we are the only petitioners against this portion of the bill. This case does not fall within the ordinary category of traders' petitions. We have really a special *locus standi*, for if the railway company had gone before the Board of Trade, under the Act of 1858, any trader might have opposed the application.

Mr. RICKARDS : But the promoters have a right to proceed for a bill if they think fit?

Little : Not unless they allow a hearing to every person who would have been before the Board of Trade.

Mr. RICKARDS : I do not see how you can limit their right in that way. The incidents of the procedure before the Board of Trade end with the procedure itself. When the promoters abandon the application to the Board of Trade and come to Parliament, the ordinary rules applicable to private bills apply.

Little : Not, I submit, in this case, unless the promoters allow to traders the right of opposition which they originally conceded. As to the number of petitions here, the Court has said in some cases that a single trader cannot be heard, but it has never said what exact proportion of traders must petition; nor has it ever declared that one trader, having a substantial interest, shall not be heard. The joint committee on railway amalgamations recommended (section 24) that care should be taken that no traders or other persons interested in procuring fair terms from the amalgamating company should be excluded by any rule of *locus standi* from appearing before the Committee on the bill. This shows the view of Parliament on such questions. I will call a witness to prove that the remaining petitioners represent a substantial portion of the trade of Plymouth using the Great Western docks.

Mr. Thomas Pitts (one of the petitioners) deposed: There were only two sugar refiners in Plymouth, and the name of one was still attached to the petition. Another petitioner was the largest shipper of China clay. Two other petitioning firms were the largest millers and biscuit makers in Plymouth. Witness himself was the largest maltster.

Saunders (in reply) : Looking at the amount of trade in Plymouth, it cannot be said that twelve firms, however substantial, represent the trade there. The fact that individual petitioners are substantial traders does not constitute them representatives of a class. The following cases are in point:—*Huddersfield Water Bill*, Smeth. 177; *Liverpool Improvement Bill*, 1 Cliff. & Steph.

SUTTON HARBOUR IMPROVEMENT BILL.

Petition of MESSRS. BURNARD, LOCK AND ALGER.

29th April, 1874.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. MELLY, M.P.; and Mr. RICKARDS.)

Harbour Improvements — Owners of adjoining Premises—Free Quays — Traders — Statutory Rates—Increased by Bill — Saving Clause—Alleged Repeal of—Access to Wharves—Obstructed by Works—Lands' Clauses Consolidation Act, 1845.

This was a bill authorising the Sutton Harbour Improvement company to convert part of the harbour of Sutton Pool into a dock, and for other purposes. The promoters' company were incorporated by "The Sutton Harbour Act, 1847," for the purpose of improving the harbour of Sutton Pool in the port of Plymouth, and making and maintaining the harbour and works in connection with it, and had become possessed of the harbour for this purpose. The petitioners were chemical manufacturers, who owned free quays in the harbour, and were liable to the company for certain rates known as Duchy rates, but who complained that under clause 42 of the bill they would be subject to other rates from which they had hitherto been exempted, such rates being levied on a higher scale than those authorised by the Act of 1847. Their *locus standi* against clause 42 was conceded, but they also claimed to be heard on the ground that the bill did not repeat a clause inserted in the Act of 1847 for their protection, and that the access to their quays might therefore be obstructed during the progress of the works:

Held, that as the protection afforded by the Act of 1847 was not withdrawn or limited by the bill, the petitioners could only be heard against clause 42, so far as it related to the new scale of rates.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be affected by the bill; (2) they raise the question of rates to be taken under the bill, but they are only affected on this matter equally with the rest of the public, and cannot be heard on their individual petition; (3) they are not injuriously affected in any way by the bill, nor does their petition show that they are.

Richards, Q.C. (for petitioners): We are chemical manufacturers, and carry on our business at premises known as the Plymouth chemical works, which we hold partly in fee and partly on lease. These premises include free quays, which existed long before 1847, and on which, as we allege, the promoters will charge us improvement rates and quay rates, from which we have hitherto been exempt. The Act of 1847 (section 72), authorised the company to charge certain rates, which may be classed as (1) Duchy rates; (2) quay and improvement rates. We have always paid Duchy rates on goods landed on our ancient quays, but have not paid quay or improvement rates, nor any rate whatever in respect of any goods exported from the harbour. There is a certain portion of the quays which we use as cement works, and we have paid dues from time to time for goods landed at these quays. Clause 4 of the bill provides for the construction of new docks, and clause 42 for a new scale of rates, included in schedules A, B, and C, to be charged after the docks are completed. No distinction is drawn in the bill or schedules between Duchy rates and quay and improvement rates, the former of which are only leviable upon imported goods, and the latter only upon goods landed on or from the quays belonging to the company; so that, as the bill now stands, we shall be liable to the payment both of Duchy rates and of quay and improvement rates, upon all goods whether imported or exported, and whether landed upon our own free quays or on those belonging to the company. Moreover, the proposed rates are considerably higher than those scheduled to the Act of 1847, so that our position is altered for the worse in every respect.

Little, Q.C. (for promoters): We do not include in our plan any free quays. The schedule of rates relating to the outer harbour, which is all that concerns the petitioners, is to be struck out. I concede them a *locus standi* limited to these rates.

Richards: We are not satisfied with that concession, because a certain saving clause in the Act of 1847 will not be repeated in the bill. That saving clause protects our private rights and prevents the company from doing anything to impede the access to our wharves, and we say that that clause ought to be repeated.

Mr. RICKARDS: Is there anything in the bill to repeal that protective clause or any part of it?

Richards: The bill will give the promoters power to construct certain works, and in carrying them out they may interfere with the access to our wharves.

Little (in reply): Nothing is proposed by the bill which in the slightest degree affects their wharves. In 1847 we interfered with them, and therefore the petitioners were protected. We object to put a clause into the bill which may hereafter be used to our detriment by the petitioners. Three clauses in the bill specially provide for the protection of the navigation, both during the construction of the proposed works and afterwards. Our Act of 1847 also compels us to compensate

Agents for Bill, Dorington & Co.

Mr. Richardson - You & Mr. [illegible] are
certain that Mr. Brown had a [illegible]
last year before [illegible] as [illegible]
that it was such [illegible]

Granville Somerset: Yes; I am not called upon to say that he had no authority; I am only called upon to meet the petition.

[*Evidence rejected.*]

Thomas: I submit that, according to the practice of the Referees, and according to the practice of committees before the constitution of this Court, it is not necessary to the validity of a petition that it should recite, when signed by the chairman of a statutory body, that it is so signed by him on behalf of such body. To establish any such rule would be unreasonable. This is the petition of the Neath harbour commissioners, and David Bovan, who signs, states himself to be "chairman of the Neath harbour commissioners." The commissioners were incorporated in 1843, and their Act of Parliament shows this to be a good signature, that Act requiring that certain notices should be signed by the chairman. As to the objection (1) that the petition is not signed by a quorum, it is true that under the Act certain documents, such as contracts or mortgages, are to be signed by five commissioners; but those documents differ altogether from a petition, and for certain purposes the signature of the chairman is sufficient under the Act. Five commissioners constitute a quorum at an ordinary meeting. Eight were present when it was resolved to present this petition.

Granville Somerset (in reply): The petition is not signed by a quorum of the commissioners, and the person who signs it does not allege that he signs it on their behalf. The Act of 1843, sections 23 and 25, insisted, for all purposes except one, that no business should be transacted except by the authority of five commissioners, and that no legal proceedings whatever should be taken without the authority of the same number. The one exceptional case in which one commissioner only has power to sign is "in all actions and suits in respect of matters or things relating to the execution of this" (viz., the Act of 1843) "or the hereinbefore recited Act." This is not a matter or thing relating to the execution of the Act of 1843, or any Act incorporated therewith. That being so, the names of a quorum of five ought to be appended to this petition. These gentlemen can only get a *locus standi* at all as commissioners, and they cannot act as commissioners with a less number than five.

The CHAIRMAN: Is there any clause empowering the chairman for the time being to act on behalf of the body?

Granville Somerset: None that I can discover.

Mr. RICKARDS: Is there no clause appointing a chairman?

Granville Somerset: If the mayor is there he is to be chairman—if not, the chairman is to be elected for the particular meeting.

Mr. RICKARDS: This gentleman calls himself "the chairman of the commissioners." Is there such an officer?

Thomas: There is no clause about the appointment of a chairman, except the clause which says the mayor shall preside at the meetings.

Granville Somerset: The petition does not say that he is the mayor.

The CHAIRMAN (after deliberation): The *locus standi* of the Commissioners is *Disallowed*; and

as it is a very special case, we desire to say that, there being no provision in the Act of 1843 for the appointment of a permanent chairman, we think that if this gentleman professed to sign on behalf of the body of Commissioners whom he is apparently representing, the petition ought to have contained an allegation to the effect that he was authorised so to sign.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Bell.*

TRAMWAYS PROVISIONAL ORDERS CONFIRMATION (LONDON STREET TRAMWAYS) BILL.

Petition of (1) OWNERS, LESSEES, OR OCCUPIERS OF PROPERTY AFFECTED BY THE BILL; (2) OWNERS AND OCCUPIERS OF PROPERTY AFFECTED BY THE BILL. (LEREW AND RANDALL, AND OTHERS.)

15th July, 1874.—(Before Mr. FORSYTH, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Tramway—S. O. 136 (as to Frontagers)—Lessees not mentioned in S. O.—Whether included by Implication—Expressly Mentioned in S. O. 22 (as to Notice)—Owners, Lessees, or Occupiers—Description Distributive—Owners or Occupiers—Practice—Objections, Sufficiency of—Frontagers—Claims by—Definitions of—Lodgers—Shopmen Sleeping on Premises—Partners—Warehouse—Timber Yard—Evidence as to—Petition—Genuineness of Signature—Question for House of Commons—Not Considered by Court—Board of Trade—Application to, for Provisional Order—Memorialists now Opposing Confirmation—Estoppel—Common Right of Petitioning.

This was a bill to confirm a Provisional Order granted by the Board of Trade for the construction of a tramway. There were two petitions against it, one by persons describing themselves as "being respectively owners, lessees, or occupiers" of houses on the line of tramway. It was objected that S. O. 136, giving frontagers a right to appear against tramway bills, mentioned owners and occupiers only, and gave no such right to lessees, and that it was consistent with the terms of the petition that all the subscribers to it might be lessees, and none of them owners or occupiers:

Held, that it was unnecessary to decide whether lessees were included within the meaning of the S. O. or not, the Referees being of opinion that the heading to the

petition, describing the petitioners as "respectively owners, lessees, or occupiers," fairly imported that some of them belonged to one class and some to another, so that some would come within the S. O.

It was further objected that certain of the names subscribed to one of the petitions were not affixed by the parties themselves:

Held, that even if this were so, it was not a question to be decided by the Court upon *locus standi*; but that the genuineness of the signatures to petitions was a matter of which the House must take cognizance.

Another objection raised was that some of the petitioning frontagers had previously signed a memorial to the promoters requesting them to construct the tramways, and were consequently estopped now from petitioning against the scheme:

He'd, that, whatever opinion any of the petitioners might have previously expressed in favour of the tramways, they were not afterwards debarred from the common right of petitioning against the bill.

Upon objections taken to individual petitioners, as to some of whom it was alleged that they were not "owners or occupiers," and, as to others, that they were not properly frontagers:

The Referees heard evidence, and considered each case, holding that some of the objections were substantiated, and that the names must be struck out of the petition, while other names were retained.

The *locus standi* of (1) owners, lessees, or occupiers was objected to, because (1) it does not sufficiently appear that any of them are either owners or occupiers of any houses or shops or warehouses in any street through which it is proposed to construct the tramways, inasmuch as they describe themselves as being respectively "owners, lessees, or occupiers," and it is consistent with the petition that the whole of the petitioners are lessees, and not either owners or occupiers; (2) none of the following petitioners are owners or occupiers of any house, shop, or warehouse, in any street through which it is proposed to construct the tramways:—[*Here followed a list of petitioners objected to.*] (3) Some of the petitioners respectively signed a memorial requesting the promoters to apply for authority to construct the proposed tramways, on the faith of which memorial the promoters applied to the Board of Trade for the Provisional Order, and, therefore, these petitioners are estopped from now opposing the confirmation of the Order. [*Here followed a list of petitioners objected to.*] (4) The signatures of the following

petitioners, though purporting to be in their proper handwriting, are not so:—[*List given.*]

The *locus standi* of (2) owners or occupiers was objected to, because (1) no one of the following petitioners is, in fact, the owner or occupier of any house, shop, or warehouse, in any street through which it is proposed to construct the tramways. [*List appended.*] (2) Others are not owners or occupiers of the houses of which they respectively allege themselves to be owners or occupiers. [*List.*] (3) As regards all the petitioners, owners, or occupiers of houses in Fortress Terrace, that is not a street through which it is proposed to construct a tramway within the meaning of S. O. 136; (4) similar to objection (3) in previous petition as to estoppel. [*List of those objected to.*]

Cripps, Q.C. (for both sets of petitioners): Objection (1) based upon the word lessees is insufficient, inasmuch as it does not distinctly aver that "lessees" cannot appear.

Pope, Q.C. (for promoters): There is no authority for saying that our allegation is insufficient. We object to the status of the petitioners under S. O. 136, because they have not sufficiently stated their qualification, and the specific point in which they fail is a natural inference from the phraseology we make use of.

The CHAIRMAN: We think that objection (1) to the first petition sufficiently raises the issue that lessees have no right to be heard. The question then, is, supposing it turns out that these petitioners are all lessees—have lessees a *locus standi* under S. O. 136?

Cripps: The question comes to this, whether the word "owner" simply means an owner in fee, or whether it includes "lessee." The expression "owner or occupier" is a general expression, put in to include all persons interested in or occupying houses in the line of street along which the tramway passes. In the Metropolitan Local Management Act the word "owner" is expressly interpreted to mean the person for the time being receiving the rack rent of the premises.

The CHAIRMAN: Supposing I am lessee for 30 years, and I have let the house for 30 years, how am I damnified?

Mr. RICKARDS: It would depend upon circumstances whether the lessee would be affected.

Cripps: S. O. 136 was framed to meet the case of frontagers, whose interest was different from that of the local authority. There may be cases in which a lessee's interest would suffer more than that of an owner or occupier, and it would be absurd, if, under those circumstances, he should be excluded from being heard under S. O. 136.

Pope (in reply): It is conceded that "owners, lessees, or occupiers" have no *locus standi*, except under S. O. 136; and that lessees are not mentioned in the S. O. Is that a *casus omissus*, or is it intentional? When you refer to the other Standing Orders, having reference to tramways, the inference is that the omission was intentional. A lessee is a different person from an owner or occupier. In the notices required by the Standing Orders, you find "owners," "lessees," and "occupiers" in different columns, and in S. O. 22 (Notice to Frontagers, in the case

of tramway bills), the word "lessees" is scrupulously introduced. The petitioners might in this case be joint-owners, or partners and lessees, so that none of them would be entitled to appear.

Mr. RICKARDS: The words of the petition are "your petitioners are respectively owners, lessees, or occupiers." Does not this imply that some of them are one thing, and some the other?

The CHAIRMAN: They either are occupiers, or owners, or lessees. Some of them must be occupiers. The word "respectively" has great force, but even without it, it does not follow that they would be joint-owners. If it did, you might argue that if petitioners said, "Your petitioners are landowners whose lands will be taken," these words would imply that they were joint-owners. The Court, without pronouncing an opinion whether "lessees" are intended to come under S. O. 136, think that the words in the petition may fairly be taken to mean that some of the petitioners are owners, some lessees, and some occupiers.

[Objection (1) over-ruled.]

Cripps: Then the question arises, what proof I am to be called upon to give that these people are owners, lessees, or occupiers?

Pope: I will state the particular names we object to. We object to Joseph Hazel because he is not a frontager.

Cripps: I can prove that he is a tenant of a livery stable, the entrance to which is up a gateway which comes into the street. The gateway fronts the street, and you approach the yard through the gateway. His exit and entrance are in front. As regards the exit and entrance he is a frontager.

Pope: He must be the occupier of a house or warehouse in the street.

[It was shown by evidence that the only entrance to the yard in question was through the gateway opening on to the street, that the petitioner's name was over the gateway, and that his house was numbered as if actually in the street.]

The CHAIRMAN: We think he is a frontager.

Pope: Then we object to H. Thorne as he does not pay rent, but is a workman on premises which he is permitted to occupy.

The CHAIRMAN: Shopmen in a large house of business who sleep on the premises are not occupiers. We must strike his name out.

J. B. Kemp was next objected to. He was in partnership with his father, but his father's name was on the rate-book.

The CHAIRMAN: His name must be struck out.

William Barker was objected to as being only a lodger, and his name was struck out.

It appeared that William Burton paid no actual rent, but his salary was proportionately curtailed in consideration of this privilege. Name retained.

It appeared that Henry Durnford was a builder of two houses not yet in actual occupation, although an agreement had been signed for a lease of them. He was held not to be an "owner" within S. O. 136, and his name was accordingly struck out.

Owners and occupiers of the houses called Fortress Terrace, which stood back from the road, to which there was a path through gardens in front of them, were held to be frontagers.

The name of Thomas L. Stott was objected to, as he was only an assistant to his brother, who was an occupier. His name was struck out.

Annie Antoni was the wife of an occupier, and signed the petition in his absence. Name struck out. The names of a son and a daughter of occupiers were also struck out.

As to petition (2), Messrs. Lerew and Randall, timber merchants in a yard to which the only access was from a road in which a tramway was proposed to be laid, were objected to as not being owners or occupiers of a house, shop, or warehouse. There being no legal definition of a warehouse, their *locus standi* was allowed as owners of the timber yard.

The other objections to individual petitioners depended on the question whether they were really owners or occupiers as they purported by their signatures to be, or merely lodgers, &c. Each case was decided upon the evidence.

Cripps: It is objected that the petitioners are estopped from appearing on this petition, because they signed a memorial requesting the promoters to apply to the Board of Trade. The single question is—are the petitioners at liberty to change their minds between that time and the present?

Mr. RICKARDS: The petitioners cannot be refused a *locus standi* on that ground. It will only be a question for the Committee in considering the weight of their opposition.

[Objection over-ruled.]

Cripps: Then there is the objection that certain signatures affixed to the petition, and purporting to be the proper handwriting of the persons whose names are given, are not in their proper handwriting.

Mr. RICKARDS: The rule of Parliament is that every man must sign his own petition himself; but that is a question affecting the privileges of the House of Commons, and is a question for the House to decide. The House has not delegated to us the duty of enquiring whether petitions presented to the House have been properly signed—that is a function which the House performs itself. We must take both the statements of the petition and the signatures as we find them.

[Objection over-ruled.]

CHAIRMAN: The *locus standi* of the Petitioners retained in Petition (1) is *Allowed*. As to petition (2) the *locus standi* of those Petitioners who have been proved on evidence to be "owners and occupiers" on the line of the proposed tramway is *Allowed*; the *locus standi* of the remainder is *Disallowed*.

Agents for Bill, Dorington & Co.

Agents for Petitioners, Dyson & Co.

TUNBRIDGE WELLS GAS BILL.

Petition of Mr. JOHN HEUGH.

20th April, 1874.—(Before Mr. RAIKES, M.P.,
Chairman of Ways and Means, in the Chair;
Sir JOHN ST. AUBYN, M.P.; Mr. BONHAM-
CARTER; and Mr. RICKARDS.)

*Gasworks—Landowners beyond 300 yards'
Limit—Adjoining Lands—Easement—Water
Pipes of Landowner—Laid Alieno Solo—Inter-
ference with—Spring—Stream—Gas Leakage—
Fouling of Stream by—Water Supply injuriously
Affected—Status of Petitioner unchanged.*

The petitioner was the owner of an estate adjoining land upon which it was proposed by the bill to erect gasworks. The sole source of water supply to his house was a spring which rose upon his estate within a few yards of this land, passed thence in a conduit pipe through the site of the proposed works, and then, re-entering the estate, was at this point collected in a cistern or reservoir, and forced up to the house by a wheel, the motive power being derived from a surface stream which also flowed through the proposed site, before entering the petitioner's estate. None of his land would be taken under the bill, but he alleged that the new works would interfere with his conduit pipe as well as with the stream, and would foul the waters of both the spring and the stream. The promoters replied that none of their works would interfere with the easement, which was not affected by any provision of the bill; that the power to build on the land, under which the petitioner's pipes were laid, was already possessed by the owner of the land; that whatever rights the petitioner might have as against such owner, he would continue to have as against the company; and that his status would therefore remain unaltered:

Held, that the petitioner was not entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) no land of his can be taken, and no right or interest affected under the bill; (2) he is not owner, lessee, or occupier of any dwelling-house within 300 yards of the limits within which the gasworks will be erected; (3, 4, and 5) it is not true that clause 21 of the bill will enable the company to take up,

destroy, or interfere with his water pipes; (6) his general allegations affect the town of Tunbridge Wells, and the local board of health have petitioned and their *locus standi* is conceded, but in no case would the petitioner individually be entitled to be heard on these matters; (7) the petition does not show that the petitioner is affected by the bill in any way which entitles him to be heard against it.

Sargood, Serjt. (for petitioner): The petitioner owns an estate of 350 acres, called Holmwood, the house having for its sole source of water supply a spring rising on the estate, but within only a few yards of the northern boundary of the proposed gasworks. The water from this spring runs through a conduit pipe which traverses the site of the proposed works, and thence flows into a cistern or reservoir on the petitioner's property. From this reservoir it is forced up to the house by means of a wheel and machinery by a certain stream called the county stream, which at this point and for a long distance afterwards runs through our grounds. If the promoters are authorised to take the land through which our pipes run, and to erect gasworks on it, they must interfere both with the county stream (which passes through that land before entering ours) and with our conduit pipes. They will foul the stream, and as the gasworks will be close to our spring, which lies at a very low level, we fear that the leakage and drainage from the works will also pollute the spring, and make the water unfit for use. The easement which we enjoy, in respect of our conduit pipe through the land which the promoters take, is enough to give us a *locus standi*; and though they may not "take up or destroy" our conduit pipe, I cannot see how they can allege that they will not "interfere" with it, because if they erect their gasworks on these lands, they must, from their proximity to this county stream and the conduit pipe, injuriously affect them both. For more than 20 years the owner of Holmwood for the time being has used the county stream for the purpose of forcing up to the house the spring water collected in the reservoir, and he has spent much money in perfecting the machinery. In any case the promoters, by their building, will interfere with our access to these pipes; but clause 24, empowering them to enlarge, extend, discontinue gasworks and "drains, sewers, mains, pipes," &c., will enable them to cut off our supply of water altogether. I admit objections 1, 2, and 6.

Michael (for promoters): If the petitioner has the right to take the water of the county stream from the land of an adjoining owner, that right remains to him and is not affected in any way, because there is no provision in the bill to touch this water. Nor do we take, over the land through which his conduit pipe runs, any powers which the owner of that land does not already possess. Such owner might, if he pleased, put up gasworks, or manufactories, or houses, over the whole of the land. We do not affect the petitioner any more by putting up gasworks than he would be affected if this land were covered with dwelling-houses. Such a result might happen at any time, and therefore his position is not affected by our bill.

Mr. RICKARDS: Would not clause 24 enable you to discontinue the petitioner's pipes, and take them out of the soil?

Michael: No. The "pipes" in that clause are our own gas-pipes. We shall have power to take up, not the petitioner's pipes, but our own. His pipes are water pipes. If the petitioner has an easement in the adjoining land, he has a remedy against the present owner in the event of injury to his pipes; and he will have exactly the same remedy against us.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioner is *Disallowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioner, *Loch & Maclaurin.*

WAKEFIELD WATER BILL.

Petitions of (1) CORPORATION OF DONCASTER;
(2) CORPORATION OF SHEFFIELD.

April 22nd, 1874.—(Before Sir J. ST. AUBYN, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.

Water Company—Sources of Supply—Natural Watershed, Abandonment of—Neighbouring Watershed, resort to—Municipal Corporations—Abstraction of Water—River—Flow of Water in—Rights of Municipalities to—Use of Water for Sanitary Purposes—Navigation—Interference with by Abstraction of Water—Water Mills—Distance from Point of Abstraction—The 20-mile Limit—S. O. 26 (Notice to Millowners, &c.)—Injury, not Distance, a test of Locus Standi—Quantum of Injury—River Pollution Commission—Gathering Ground, encroachment on—Sewer Flushing—Drainage Area—Practice—Statements of Facts—How far Received.

The Wakefield water company derived their supply from the watershed of the River Calder, but, finding this source of supply insufficient, now sought power to tap the watershed of the Don, and impound and divert some of the waters of the Little Don, a tributary of that river. The bill was opposed by the municipal corporations of two boroughs situated upon the Don—viz., Sheffield, which was twelve miles, and Doncaster, 32 miles below the point of abstraction. Sheffield is supplied with water by a company who do not obtain their supply from the Don or its tributaries, and who did not petition; but the corporation of Sheffield alleged an interest in the Don as a possible source of future supply, and further, as the sanitary authority,

alleged that the proposed abstraction of water would diminish the volume and purity of the river in its course through the borough, and would injuriously affect it for sanitary purposes. An allegation to the same effect was made by the Corporation of Doncaster, who further complained of injury (1) because the water supply of the borough was in their hands, and such supply was taken from the Don; (2) as millowners, though their mills were beyond the 20-mile limit; and (3) as owners of shares in the Don navigation, which would suffer if the flow of water were decreased. Both petitioners pointed out that the water abstracted by the company from the Don watershed would not be returned into the river in any form, but must necessarily, after distribution within the company's area of supply, be diverted into two other rivers, the Aire and Calder. On the part of the promoters, it was contended, as to Sheffield, that the corporation were not concerned in the water supply of the borough, while, for sanitary purposes, the flow in the Don would be amply sufficient; and as to Doncaster, that the bill could cause no appreciable decrease in the volume of water there, while the distance of the borough from the point of abstraction was so great as to disqualify the corporation from opposing the bill in any capacity:

Held, that the fact or degree of injury was a question which could only be decided by engineering evidence, and was therefore a question for the Committee on the bill; that the Referees would look to probability of injury rather than to distance; and that both petitioners were entitled to a *locus standi*.

The *locus standi* of the corporation of Doncaster was objected to, because (1) before the powers of the bill can be carried into effect Doncaster will be supplied with water from other sources than the River Don, and therefore the petitioners have no interest in the river except to secure a sufficient quantity of water to keep the channel pure so far as may be necessary for sanitary purposes; (2) the Little Don river, from which the promoters propose to take their supply, is but a tributary of the Don, into which it flows many miles above Doncaster; there are several tributaries to the river Don between its confluence with the Little Don and Doncaster; and the waters of the river Don, irrespective of the Little Don, will be amply sufficient for sanitary purposes, especially as they may be increased by water supplied by the

new waterworks of the petitioners when completed; (3) the quantity of water which the promoters are bound by the bill to send down the Little Don river daily will be amply sufficient to compensate for any abstraction of water which will be caused by these works; (4) the Don is a navigable stream and the navigation is vested by lease in the Manchester, Sheffield and Lincolnshire railway company who have petitioned; (5) the petitioners have no interest in the waters of the Little Don river entitling them to be heard; (6) the mills, &c., belonging to the petitioners are situate more than 20 miles, measured along stream, from the proposed point of abstraction, and the injury, if any, sustained by them is too remote; (7) no lands or rights of the petitioners are interfered with, and the municipality will not be prejudicially affected; (8) the promoters are obliged to abandon their present source of supply and can find no other source within the Wakefield watershed which would furnish a sufficient supply of good water, and are advised that the Little Don river is the best and most practicable source to which they can resort.

The *locus standi* of the corporation of Sheffield was objected to, because (1) Sheffield is supplied with water by a company whose sources of supply differ from that contemplated by the bill, and the petitioners have no interest in the Don except to secure a sufficient quantity of water to keep its channel pure for sanitary purposes; (2) the waters of the Don, irrespective of the Little Don, will be amply sufficient for these purposes, increased as these waters may be by the water supplied by the Sheffield water company. (The remaining objections were substantially the same as objections 3, 4, 5, 7, and 8, to the previous petition.)

Marriot, Parliamentary Agent (for the corporation of Doncaster): For more than a century we have supplied the inhabitants of Doncaster with water from the Don. We are also large shareholders in the Don navigation; and we are the sanitary authority of the borough. The Little Don is an important tributary of the Don, and its waters tend materially to maintain the volume and purity of the Don. The works of the promoters are so situated, however, that the water they distribute must necessarily flow into the rivers Aire and Calder, which are fed from a watershed wholly distinct from that of the Don, so that the result of the bill will be the entire diversion of the water impounded from one watershed to another, to the manifest injury of every town lower down the main stream. As it is, the increasing shallowness of the Don causes alarm, and the defective quality and volume of water induced the corporation last session to obtain an Act authorising them to improve their water supply by going to other sources. Some years, however, must pass before our works are completed. Meanwhile, the water of the Don must be used. Indeed it always will be used, for sanitary or other purposes; the new supply will be only supplemental to the existing supply; and we allege that we cannot dispense with any of the water of the Don. As the promoters intend under the bill to supply not only Wakefield but 42 other places, it is clear that the

quantity of water they will abstract must be very large, and the injury to us will be proportionate. As to the navigation, it is certainly vested in the Sheffield railway company, but if the navigation be injured, the trade of Doncaster will be injured, and the corporation are the proper parties to protect the trade. As to our distance, and the distance of our mills, from the point of abstraction, the test is injury, not distance. (*Weardale and Shildon Water Bill*, Smeth. 103; *Bradford Water Bill*, 1 Cliff. & Steph. 44.)

Sargood, Serjt. (for corporation of Sheffield): Wakefield simply says:—“We want more water than we can get from the Calder, our present source of supply, and we will go into our neighbours’ watershed and help ourselves.” I submit that the representatives of inhabitants within the boundaries which the promoters invade are necessarily entitled to a *locus standi*. It is true that Sheffield is supplied with water by a company and not by the corporation, but if its largely increasing population ever require more water, the Little Don, which Wakefield now proposes to appropriate, is the natural source to which we shall go. It is a reserve which the corporation have a right to protect, and such is the statement in our petition. The promoters say that we have no interest in the waters of the Don, except to secure a sufficient flow for sanitary purposes. That objection really concedes our *locus standi*, for it admits our interest in this respect. It is the flood water alone which keeps the river pure. If this bill passes, the result will be an accumulation of filth which we should have no possible means of removing. The commissioners on the pollution of rivers recommend the Legislature to watch jealously any encroachment by one town upon the gathering ground of another, and not to allow the appropriation of a source of supply, “naturally and geographically,” belonging to a town or district nearer to such source, unless under special circumstances which justify such appropriation.

Venables, Q.C. (for promoters): As to the corporation of Doncaster, their waterworks, sanctioned in 1873, will be completed before ours will be, and as they go to other sources, our bill cannot affect their water supply. Clearly the corporation cannot represent the navigation; the railway company, who own the navigation, appear, and shareholders in an undertaking cannot be heard separately. The drainage area which we affect is only 5,250 acres, while the drainage area of the Don at Doncaster is 300,000 acres. We take, therefore, about a fiftieth part of the flood flow, that is, if we store the whole; while at low water we shall give the Doncaster people a great deal more than they get at present. Doncaster is 32 miles below the point of abstraction; and S. O. 26, which prescribes notice to owners, &c., within the 20-miles’ limit, raises a presumption that, except in extraordinary cases, persons beyond that limit have no *locus standi*.

The CHAIRMAN: In the *Weardale* case it was said that injury, not distance, would govern the case.

Venables: Here it is as though somebody complained in London that the Thames was

diminished in volume by the appropriation of a small drainage area in Gloucestershire. As to Sheffield, if we interfere with any possible future source of supply, the proper parties to petition are the water company, who do not take the water of the Don. The corporation complain that their means of flushing sewers will be affected if we are allowed to impound water from the Little Don. But the drainage area above Sheffield is 63,000 acres, of which we shall take 5,250.

Sargood: We cannot go into these figures now.

Mr. RICKARDS: I do not think we can take any statistical statements from counsel; those are matters of proof.

Venables: If competition is alleged between two railways you look to the map; and here you will see on the map that Sheffield is a long way off, and that, for clearing the bed of the river in flood time, it can matter little whether the water comes from 53,000 or from 63,000 acres.

Mr. RICKARDS: We cannot tell whether the drainage area is 5,000 or 10,000 acres.

Venables: By measurement on the deposited plans it may be seen what drainage area we propose to take.

Mr. RICKARDS: The petition says that the flood waters are of immense value in carrying off the accumulated mud and refuse; and in their objections the promoters admit the right of the petitioners to see that there is a sufficient quantity of water to keep the channel pure for sanitary purposes. I do not think we can enter into any evidence as to quantities.

Venables: You must enter into facts to a certain extent, otherwise any person might give himself a *locus standi* by simply alleging a grievance. The sole question must be whether *prima facie* there is a substantial grievance; and maps are usually put in and a judgment come to by their help. Sheffield is twelve miles below the point of abstraction; the stream we touch is only a tributary of their main river; and the map shows that, for the purpose of scouring the river bed, the supply of water would not be appreciably diminished.

The *CHAIRMAN* (after deliberation): The *locus standi* of the Corporation of Doncaster and of the Corporation of Sheffield is *Allowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Corporation of Doncaster, *Marriott & Co.*

Agent for Corporation of Sheffield, *Heggarty*.

WIGAN IMPROVEMENT BILL.

Petitions of (1) THE LOCAL BOARD FOR THE DISTRICT OF HINDLEY, AND (2) THE PEMBERTON LOCAL BOARD.

20th April, 1874.—(Before Sir J. ST. AUBYN, M.P., in the Chair; Mr. FORSYTH, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Improvement Bill—Gas Company—Municipal Corporation—Transfer of Undertaking, to—By Agreement—By Compulsion—Local Board—Previous Purchase of Part of Undertaking, by—Not Recited in Bill—Statutory Rights Infringed—Invasion of District—Previous Legislation, complaint of—Local Board District—Transferred from Gas Company to Corporation—Change of Status—Increase of Price—Limitation of Dividend—Safeguards to Consumers Impaired—Reduction of Rates Postponed—Outside Consumers—Interests of, Sacrificed—Price of Gas—Municipal Taxation.

The Wigan Gas Act, 1861, incorporating the Wigan gas company, authorised the sale of the company's undertaking by agreement to the corporation of Wigan. The corporation now promoted a bill enabling them to require such sale by compulsion, and providing that it should be effected within a limited period, under the Act of 1861, independently of the bill. Clause 83 also empowered the promoters to raise the price of gas, but they undertook to strike this clause out of the bill. A part of Hindley was within the limits of supply defined in the Act of 1861, but under an Act of 1872 (not, however, mentioned in the bill) the portion of the company's undertaking situate within the Hindley district had been purchased by the Hindley local board, who now alleged that as the bill ignored this purchase, and revived the powers of purchase under the Act of 1861, the corporation of Wigan might claim the whole of the company's original area of supply, and might, therefore, lay down mains within the Hindley district.

The local board of Pemberton, who were supplied by the company, objected to the transfer, on the ground (1) that the gas supply in Pemberton was inadequate, and that the bill should provide for an improved supply there; (2) that the petitioners intended as soon as possible to apply to Parliament for powers of gas-supply on their own account, and that provision should be made in the bill for the supply to them of gas in bulk, and the sale to them of the mains, &c., in the Pemberton district; and (3) that the transfer of gasworks from a company to a corporation was an injury to consumers outside the municipal limits, postponing the period within which they might reasonably look for reduced rates, depriving them of the safeguards imposed by the General Acts upon gas companies.

and exposing them to the risk of continued high charges for gas in order to lighten the municipal taxation in Wigan :

Held, as to Hindley, that the purchase by the local board under the Act of 1872 could not be affected by the bill, and that the petitioners, therefore, had no reason to apprehend an encroachment on their district; and as to Pemberton, that the injury alleged in the petition was the result of past legislation, the transfer from the company to the corporation having been authorised by the Act of 1861. The *locus standi* of both petitioners was therefore disallowed, except for the purpose of seeing that the promoters fulfilled their pledge to withdraw clause 83. [See post, p. 134.]

The *locus standi* of the Hindley local board was objected to, because (1) no lands or interest of theirs are affected; (2) the undertaking of the Wigan gas company, proposed by the bill to be purchased by the corporation of Wigan, does not include the mains, pipes, rights, and powers already purchased by the petitioners; (3) by virtue of the Hindley Local Board Act, 1872, it will be impossible for the Wigan gas company to sell the property and rights therein referred to, and all the company's powers respecting the supply of gas within the district of the Hindley local board have been expressly repealed by this Act; (4) it is proposed to strike out clause 83 of the bill, but even if not struck out the petitioners are not entitled to be heard, because the corporation have no power to supply gas within the petitioners' district; (5) the object of the bill is to transfer the gas undertaking, with all the rights, powers, and duties of the gas company, and not to confer upon the corporation any powers not already vested in the gas company; the petitioners, therefore, are complaining of past legislation; (6) if any *locus standi* is granted to the petitioners, it should be limited to their rights under the Act of 1872; (7) they cannot be heard according to practice.

The *locus standi* of the Pemberton local board was objected to on the grounds stated in the above objections 1, 5, and 7, and also because the promoters have given the petitioners an undertaking to strike out clause 83, and will have no further power respecting the price of gas to be supplied within the petitioners' district than the Wigan gas company now possesses.

Pembroke Stephens (for both petitioners) : The bill is a general improvement bill, but our objections are confined to the parts relating to gas. The promoters say that the bill does not change the status of the parties, and that our complaints are of past legislation. The difference, however, is that the Act of 1861 gave a simple power of purchase by agreement, whereas the bill contains a compulsory power of purchase within twelve months. The words are, "shall be put in execution accordingly, and the gas company

shall sell, and the corporation shall buy, the gas company's undertaking." To this extent the bill expressly overrides the Act of 1861. Further, the bill does not say, as it ought to have said, that the company, owing to the Act of 1872, are no longer able to sell the undertaking which was in their hands in 1861; it does not say that the corporation shall buy what the company now have to sell, but what the company had to sell, reverting to the old clauses of the Act of 1861. The company has sold to the Hindley local board the right of supplying three of the townships comprised within the limits specified in the Act of 1861, and the local board now have separate gasworks of their own; but if the Wigan company buy the gasworks under that Act, the rights of the company, as they existed in 1861, may revive and pass to them, notwithstanding our purchase of part of the undertaking.

Mr. FORSYTH : A portion of these works has been conveyed from A to B. How can a subsequent Act affect that conveyance unless it expressly says that the works shall be taken from B?

Stephens : The bill professes to revive the old powers of 1861, under which the undertaking, as a whole, could have been purchased. If it was not meant to do so, the intention should have been clearly expressed, whereas the Act of 1872, or our purchase, is nowhere mentioned. We apprehend that the Wigan corporation may be able under the bill to extend their pipes into the townships transferred to us, and so compete with us there, though we have statutory authority for the exclusive supply of these townships. The Pemberton local board were constituted in 1872, and are the sanitary authority, having control of the streets and the public lighting. Pemberton is within the limits of supply, and is partially supplied by the Wigan gas company, but such supply is quite inadequate for the wants of the district, and we say that if the corporation are empowered to buy the undertaking, they should be compelled to lay down new mains of a sufficient size to meet the demand. Moreover, we desire to apply to Parliament as soon as possible to supply our own district; and we submit that if the gasworks are transferred to the corporation they should be required to supply us with gas in bulk, and undertake to sell us their mains, pipes, and plant within our district whenever we obtain the requisite powers, and not to oppose us when we apply for such powers. We shall otherwise be exposed to the danger of being made to pay an excessive price for our gas to relieve the rates of Wigan; the bill should contain stringent provisions protecting Pemberton, with the other out-townships, from this danger. Hitherto Pemberton has only had to deal with the gas company, with its authorised share and loan capital; and at the worst our rates could only be kept up to such a point as would enable the company to pay a dividend of ten per cent. upon that capital. If the company came to Parliament for an increase of that capital we should be heard to object, for when once the dividend of ten per cent. is reached, down goes the price, and any increase of capital delays the period

for lowering the price, since ten per cent. must also be paid on the increased capital. The effect of the transfer from the company to the corporation will be to substitute a large and indefinite capital for a limited and definite amount.

Mr. RICKARDS: The only ground upon which you could have a *locus* against this bill would be that the price of your gas was going to be altered. The price the consumers are now liable to pay is fixed by the Act now in force, and if nothing is said in the bill about price, that restriction will continue. The promoters concede to you a *locus* against clause 83 that you may see it is withdrawn.

Stephens: Price is only one of the conditions affecting gas consumers. If our prospect of reduced rates arises in 1876 under the company, while under the corporation it is likely to be delayed till 1877, our position is worse, though the maximum price limited by the Act may be the same. Anything that will have the effect of postponing a possible reduction of price, or of depriving us of such a reduction is an injury to us. The effect of this purchase may be to lighten the rates in Wigan by keeping up the price of gas in Hindley. Even assuming that we have to pay no extra rates, the mere transfer of jurisdiction from a company to a corporation, having different objects and different interests from ourselves, entitles us to be heard.

Mr. FORSYTH: If a gas company doubles its capital, it cannot get rid of the liability to diminish the price. How is it that a corporation is not subject to the same liability?

Stephens: Because the Act applicable to a gas company is not applicable to a corporation.

Mr. RICKARDS: Can you refer us to any authority showing that a *locus standi* is given to consumers against a bill brought in by a gas company for increasing its capital?

Stephens: I know of no case where a company has been bold enough to object to consumers being heard against such a bill. The Wigan corporation collect, perhaps, ten different rates, nine being levied in Wigan, while the tenth extends to the district taken over by this bill. Unless we obtain some clauses for our protection, what is to prevent the corporation from reducing every one of the nine municipal rates in Wigan, keeping up the tenth to its full maximum?

Milward, Q.C. (for promoters): Clause 20 of the Hindley Local Board Act of 1872 provides for the purchase by the local board of the whole undertaking of the Wigan gas company lying within the limits of the Act. The purchase-money has been paid; the conveyance is complete. How, then, can the corporation of Wigan acquire in the face of the Act the smallest jurisdiction in Hindley? Hindley no longer remains a portion of the gas company's undertaking. There has been a statutory sale of this portion, and the company cannot sell it twice over. The sale provided for by the bill is "the gas company's undertaking," i.e., their undertaking as it now exists. We only go back to the Act of 1861 for certain purposes; we do not, and cannot, without express powers, bring back the Hindley district into the Wigan dis-

trict; and there are no such powers in the bill. As to the Pemberton local board, if we had agreed with the gas company for the sale of their undertaking under the Act of 1861, Pemberton would have had nothing to say to it. We are doing no more than that now; we are not proposing to alter the status of Pemberton. We are to supply this district under the same legal obligations as now exist. After the purchase, we shall stand in the exact position which the company held up to the day before the purchase. The position of the Pemberton local board is not altered for the worse because we propose to acquire the undertaking of the gas company by compulsion instead of by agreement. If we had been going to alter the price of gas that would have been another thing, but the bill merely transfers the works from one body to another in pursuance of past legislation.

The CHAIRMAN (after deliberation): The *locus standi* of the Hindley Local Board and of the Pemberton Local Board is *Allowed* against Clause 83 of the bill.

Agent for both petitioners, *Lewin*.

Petition of (2) RALPH DARLINGTON AND OTHERS.

Gas Company—Transfer of Undertaking—Officers of Company—Right to Compensation.

Upon a bill for the transfer of the undertaking of a gas company to a municipal corporation, the officers of the company complained that no provision was made for their compensation:

Held, that the officers of a joint-stock company accept employment in it subject to all the incidents of the company, and that they have no right to claim compensation on the ground that their services are no longer required.

Wyatt, Parliamentary Agent (for petitioners): The petitioners have been officers of the gas company from its commencement, and are much in the position of occupiers of land to be taken compulsorily for the purpose of an undertaking. The bill does not provide for the compensation of the gas company's officers. In cases of transfer or amalgamation, where schemes have been settled by the Board of Trade, provision has been made for compensation of the officers of the amalgamated company. For example, in the *Gas Light and Coke Company's* case even the directors were compensated. We think we ought to be protected in the same manner, and ask to be allowed to go before the Committee to say so. In the *Telegraphs Act, 1868*, the officers were amply provided for. In the case of railways the matter is always settled out of

doors. It is true, the gas company petition, but if they come to an agreement with the corporation, no provision may be made for us; and unless we are mentioned in the Act, the corporation will say hereafter—"we can do nothing for you; it would be *ultra vires*."

Mr. RICKARDS: Where a man takes office under a joint-stock company, he takes it subject to all the incidents of the joint-stock company.

Mr. FORSYTH: A railway company gets compulsory powers to take land. Have the gamekeepers who look after that land a right to compensation because their services may be no longer required?

Milward, Q.C. (for promoters): Suppose a gentleman's house is taken for a railway, and in consequence he breaks up his establishment. The butler and the cook would have no *locus standi*. [*He was then stopped.*]

Locus standi Disallowed.

Agent for Petitioners, Wyatt.

Agents for Bill, Sharpe, Parkers, Pritchard & Sharpe.

END OF REPORTS OF 1874.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1875.

. Where a Standing Order is quoted or referred to, the numbering is that of the Standing Orders for the Session 1874.

BIRMINGHAM AND STAFFORDSHIRE GAS BILL.

17th, 19th, and 22nd March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., in the Chair; Mr. PEMBERTON, M.P.; * and Mr. RICKARDS.)

Petitions of (1) MANOR OF ASTON AND HANDSWORTH LOCAL BOARDS; (2) TIPTON LOCAL BOARD; (3) OLDBURY LOCAL BOARD OF HEALTH; (4) SMETHWICK LOCAL BOARD OF HEALTH; (5) BALSALL HEATH LOCAL BOARD OF HEALTH; (6) COMMISSIONERS AND CORPORATION OF WALSALL; (7) WEST BROMWICH IMPROVEMENT COMMISSIONERS.

Practice — Hearing — Inter dependent Bills — Forming one Scheme — Joint Consideration of — Application for — Treated Separately by Court — Petitions grouped — Case cited by Promoters — Applicable to several Petitioners — Reply Limited to One Counsel for Petitioners — Reply claimed by Counsel for Promoters — Not Allowed.

*Gas Company — Purchase of Undertaking — By Municipal Corporation — Previous Acts Authorising — Opposition by Outside Districts — Local Boards — Within Company's Area of Supply — Transfer of Outside Districts to Corporation — Altered Circumstances — Change of Status — Increased Population — Alternative Powers to Company — New Capital — Reserve Fund — Obligations of Gas Company — To Reduce Rates — Limit of Dividends — Municipal Corporation Freed from Similar Obligations — Borough Rates — Agreement — Scheduled to Bill — Confirmation by Bill — Incorporation of Acts — Effect of — Renewal of Powers — Borough Funds Act.**

* On March 19th and 22nd, Sir J. Duckworth also sat as Referee.

Two bills were promoted, one by a gas company, authorising (as its main object) the transfer of their undertaking to a municipal corporation, and the other by the corporation, authorising them to buy and carry on the undertaking. Several petitions were presented against the company's bill, and as many of the petitioners opposed both bills, application was made to the Court to take the bills together, treating them as one scheme:

Held, that the usual course must be followed of considering each bill separately; and on account of the number of petitions the Court divided them into groups, hearing and deciding on each group before dealing with the next.

A case, then unreported (*ante*, p. 124), and adverse to the whole of the petitioners, being cited for promoters, the Court allowed a reply by one counsel on behalf of the petitioners generally, though the case had been mentioned in argument by two of the petitioners' counsel in their original speeches. A right to a second reply upon the case was then claimed by counsel for promoters, but after argument was rejected by the Court.

In 1845 an Act was passed enabling a gas company to sell and the corporation of B. to buy the gas undertaking, or any part of it, subject to all then existing obligations, "under such terms and conditions as may then be agreed upon between the parties;" and the corporation were empowered "to effect such purchase, and to have and hold

the said undertaking." In 1864 the gas company obtained another Act which (*inter alia*) provided that the Act of 1845 should be incorporated with, and construed as forming part of that Act. A bill was now promoted by the company scheduling an agreement for the purchase of the undertaking by the corporation. The bill was opposed by several local boards and other public bodies representing outside districts within the company's area of supply, on the ground that they desired to make and supply their own gas, that they objected to be thus transferred as customers and consumers from a company to a municipal corporation, and that they would in the event of such transfer be deprived of the guarantees they now enjoyed for reduced price, and might in effect, by paying an enhanced price for gas, be contributing to diminish the rates of the town of B. It was objected that they were really complaining of past legislation, and that such of the petitioners as appeared against the bill of 1864 were now out of Court, as they did not in 1864 oppose that part of the bill which continued the powers of sale given in 1845. It was further objected that increased population in the outside districts and altered circumstances could not be pleaded as a bar to an agreement made under statutory authority; that the bill did not injuriously affect the position of any of the petitioners, as it preserved all existing rights; that the scheduled agreement conformed in every respect to the statutory powers conferred on the promoters in 1845; and that the bill did not vary the provisions of the Act of 1845, and was not essential to the confirmation of the agreement:

Held, that as the Act of 1845 contained no machinery for carrying out the transfer then sanctioned, and as new interests and jurisdictions had meanwhile grown up, and a new state of facts had arisen affecting third parties, the petitioning local boards had a right to urge that the terms and conditions in the scheduled agreement for the transfer were defective and would injuriously affect the districts represented by them: the *locus standi* of all the petitioners was therefore allowed.

The *locus standi* of all the local boards was objected to substantially on the same grounds,

because (1) the bill gives effect to an agreement for the transfer to the corporation of Birmingham of the undertaking and powers of the Birmingham and Staffordshire gas light company; such agreement being made in pursuance of provisions authorising the same in an Act passed in 1845 enlarging the powers of the company. By the bill the existing rights, powers, interests, privileges, or property of the petitioners will in no respect be interfered with or affected; neither does the bill in any respect or particular extend or enlarge the existing rights, powers, and privileges of the company with reference to the sale and transfer of their undertaking to the corporation of Birmingham. This will appear from the statement following:—

(a) By the Act of 1845, and subsequent Acts of 1858 and 1864, the company are empowered to raise capital, and make and supply gas in the borough of Birmingham and places in the neighbourhood thereof, including the districts represented by the petitioners. (b) Sections 193 in the Act of 1845, and 5 in the Act of 1864, prescribe the limits within which the company are authorised to supply gas, including the districts of the petitioners. (c) Section 194 of the Act of 1845 enables the company, with the consent of three-fifths of the shareholders, "to sell, convey, and assign" to the corporation of Birmingham "their undertaking, or any part thereof, with the land, buildings, works, and other property belonging thereto, and all or any of their rights, powers, and privileges connected therewith (but subject to all then existing provisions, enactments, mortgages, contracts, and liabilities affecting the same), under such terms and conditions as may be agreed upon between the parties," and the corporation "are hereby empowered to effect such purchase and to have and to hold the said undertaking," &c. (d) In this way Parliament has directly sanctioned the principle of selling and transferring to the corporation of Birmingham the whole undertaking and powers of the company for the supply of gas to Birmingham and its outlying districts, including the districts of the petitioners, and neither on the occasion of the application for the Act of 1845, nor on any subsequent occasion when the company has been in Parliament, has any objection to the power so granted been raised by the inhabitants of, or by any local authority on behalf of the districts of the petitioners. (e) Section 2 of the Act of 1864 provides that the Acts of 1845 and 1858 respectively shall be incorporated with and construed as forming part of the Act; and that the said Acts and their respective provisions shall extend to, and be applicable within, the limits as defined by the Act of 1864. (f) In pursuance of the authority thus conferred, an agreement for the sale of the undertaking of the company to the corporation of Birmingham has been made, and the same is set forth in the first schedule to the bill. That agreement has been made in strict conformity with the existing powers of the company and the corporation, and the transfer is to be subject to all the company's liabilities and obligations as to the supply of gas; and the prices to be charged therefor, and otherwise, existing on the day of completion thereof. (g) Nothing in the bill in

any way, extends the provisions of the agreement so made under Parliamentary authority, or injuriously affects the rights and interests of the petitioners to any greater or other extent than they are affected by the agreement so entered into under Parliamentary authority. (h) If the bill passes into a law, the undertaking and all the powers of the company will be simply transferred to the corporation, who will have no larger or other powers than those already possessed by the company, and will be subject to all the provisions to which the company are now subject, and the petitioners will not be deprived of the benefit of any statutory enactments of any description.

(2) It is not alleged in the petition, nor is it the fact, that any property or powers, rights or interests of the petitioners will be taken or interfered with by the bill; (3) the petitioners have not, according to practice, any right, title, or interest to be heard against the provisions of the bill enabling the corporation to borrow money for the purposes of the agreement; (4) the allegations respecting the distribution of the reserve fund of the company are not warranted by anything contained in the bill, and the petitioners have no interest therein; (5) the raising of additional capital by the company is a matter of internal policy to which the petitioners have no right to object, and the powers are not to be exercised if the transfer of the undertaking is completed on or before January 1, 1876; (6) the petitioners do not state how they will be prejudiced or affected by the bill, nor is it the fact that they will be so prejudiced; (7) the bill contains no provisions which can operate injuriously to the petitioners or to the interests of the districts which they represent; and the principle of the transfer having already been ratified by Parliament, and acquiesced in by the petitioners, they are not now entitled to be heard against either the preamble or clauses.

Sir Mordaunt Wells (for Tipton local board): This bill authorises the Birmingham and Staffordshire gas company to transfer their undertaking to the corporation of Birmingham, while another bill, the corporation gas bill, authorises the corporation to take over the undertaking. Thus the two bills are intimately connected and really form one scheme, and many of the local boards and other petitioners petition against both. Should not the two bills, therefore, be taken together?

Little, Q.C. (for promoters) objected.

The Chairman: We will hear each bill separately, and will take first the petitions of the local boards against the company's bill.

Clerk, Q.C. (for Aston and Handsworth local boards): The population of the Aston district is now about 42,000, and is rapidly increasing. It contains 30 miles of streets, and 8,000 houses with a rateable value of £25,581. The Aston local board was constituted in 1869; the Handsworth local board was constituted in 1874; and the district contains a population of 16,400, with 25½ miles of streets and roads, about 3,000 houses, and a rateable value of £71,466. The company supply both districts. The maximum price mentioned in the Act is 3s. per 1,000 in three remote places within their

limits of supply, and 4s. in all other places, including our districts; but the actual charge is 3s. and 3s. 6d., the gas being of an illuminating power equal to 15 candles, instead of 14 candles, as required by the Act of 1864. The purchase-money for the company's undertaking is settled in the agreement at £10,906 cash, and perpetual annuities equal to ten per cent., or £320,400, on a portion of the company's share capital, and £7 10s. per cent. on another portion of the share capital amounting to £850,000. That is, the annuities are calculated upon the maximum dividend which the gas company can pay to their shareholders upon these respective amounts of share capital. Then the company's reserve fund is not to be handed over to the corporation, and is no doubt meant for distribution as a bonus among the shareholders. Thus the consumers will be deprived of the benefit of this fund. We object strongly to the terms of the agreement, as being injurious to consumers and entirely contrary to public policy; and as by coming here the promoters admit that the powers of the Act of 1845 are insufficient to effect the transfer to the corporation, and that some special powers are necessary, we, on our side, ask Parliament to say that such powers are no longer applicable to the altered circumstances of the case. We believe that, in order to provide funds for payment of the annuities, it will be necessary for the corporation very greatly to increase the present price of gas to consumers. We say that to authorise the corporation to supply gas to large and important districts outside their borough and entirely beyond their control will be highly inexpedient and inconsistent with the provisions of the Public Health bill now pending, which encourage each local board to provide its own independent supply of gas. Surely Parliament will not allow a power given 30 years ago, and lying dormant and unnoticed ever since, to be carried into effect, however material the change of circumstances, without allowing a word to be said by public bodies who allege that they will suffer such great prejudice. In the *South London Gas Bill* (2 Cliff. & Steph. 218), the *locus standi* of consumers was allowed as well as that of the Metropolitan board and vestries. In case the transfer fails, the company ask for alternative powers to raise further capital, not exceeding £469,000, and issue new shares. There is nothing in the bill to indicate in what way this money is to be applied; and we say that it is in excess of the wants of the company, and that the company seek to create this new share capital in order to divide a larger amount of profits than they are now authorised to divide among their shareholders.

Granville Somerset, Q.C. (for West Bromwich commissioners): Our district is eight miles from Birmingham. We were constituted under the West Bromwich Improvement Act, 1854, and our district extends over an area of 5,710 acres, with 9,000 houses, and a population of more than 50,000. The company now supply the whole of West Bromwich. When the enabling Act of 1845 was passed, we were not in existence as a statutory body. At that time the public lights of West Bromwich were confined to the turnpike road. Now the district is lighted throughout

under our regulation. Again, in 1845, the aggregate population of the towns and districts comprised within the company's area of supply, excluding Birmingham, amounted only to 251,779, while in 1871 it was 335,776. The consumption of gas in West Bromwich, both public and private, is very considerable; and we say that if any local authority is to be entrusted with gas supply, it ought to be the local authority of the district, and not the Birmingham corporation. The gist of the objections to our *locus standi* is that the bill merely carries out the power given to the company and corporation by the Act of 1845. If so, what is the necessity for a bill? In 1845 no local board was in existence to protect the inhabitants of West Bromwich; so that, as regards ourselves, the state of things is now entirely altered. Suppose we came next year for a bill to supply our own district, we should have the corporation of Birmingham saying—"Parliament gave us power to take over this undertaking; we have paid for it at its prospective value; and we have a right to be protected against competition." Thus we should have no chance of getting our bill. As a dividend of 10 per cent. is now being reached by the company, we should shortly have a reduction of price; but under the bill we should have no prospect of such reduction. Outsiders would be charged with the highest price, and would really be helping to adorn the town of Birmingham or to lessen its rates. Against bills proposing a change of the taxing authority, the parties taxed have a right to be heard. (*Clyde Light-houses Bill*, 2 Cliff. & Steph. 42; *County Down and Belfast Borough Bill*, 1 Cliff. & Steph. 130.) As to the *Wigan Improvement Bill* (*ante*, 124), which no doubt will be cited on the other side, it gave no new powers.

Sargood, Serjt. (for the Oldbury local board): We were constituted in 1857. All that Parliament did in 1845 was to authorise the company to sell their undertaking to the corporation. Parliament did not sanction the terms of the contract; and we are entitled to be heard, not only as to those terms, but to show, if we can, that, owing to altered circumstances, the transfer now is altogether inexpedient. The fact that the company propose to pocket the reserve fund, which should go towards reducing the price of gas, would alone give us a *locus standi*.

Sir Mordaunt Wells (for the Tipton local board): We represent a district twelve miles from Birmingham, with a population of 30,000; and we ask you to use in our favour the discretion vested in you by S. O. 135 (as to local authorities injuriously affected). If you exclude the local boards, you hand over the large populations of these districts to the control of the corporation of Birmingham without hearing anyone on their behalf. Under the bill we shall be prejudiced in a variety of ways. There is no limit to the power to borrow, and looking at the distance we are from Birmingham, the question of illuminating power becomes a very important one. If the bill passes we shall be precluded from establishing gasworks of our own, and all the outlying districts may be sacrificed to Birmingham. The broad distinction between the *Wigan* case and this is, that there the bill sought

to adopt the provisions of a very recent Act (1861), which enacted that the powers it conferred should be exercised within a limited period. Moreover, looking at the decisions in other cases, I ask the Court to reconsider their decision upon the *Wigan Bill* if the case cannot be distinguished from this, though I say it can. In 1845, when this transfer was sanctioned, the Act constituting local boards had not passed; but in 1861 local boards were in existence, and in deciding the *Wigan* case, the Referees may have thought that these boards should have come before Parliament in 1861. The following cases are in my favour:—*Aberdare Gas Bill* (2 Cliff. & Steph. 23); *Watford Gas and Coke Bill*, *Ib.* 99; *Staffordshire Potteries Water Bill* (1 Cliff. & Steph. 152); *Gas Light and Coke Company's Bill* (2 Cliff. & Steph. 44); *South London Gas Companies Bill* (*Ib.* 218).

Clerk, Q.C. (for commissioners and corporation of Walsall): There are certain special circumstances in this case. Walsall was included in the company's area of supply, under the Act of 1845. The company did nothing, however, towards supplying our district till 1859, when they extended their gas mains throughout the town of Walsall. But so early as 1824 the commissioners had obtained an Act enabling them to supply the district. They have spent £50,000 upon their works, and now produce and distribute in competition with the company gas of equally good quality and at a lower price than that of the company; while, at the same time, we have paid off part of the cost of constructing our works. The practical result is that the company are now charging nearly 30 per cent. more for gas in Birmingham and in other towns and places supplied by them than they charge in Walsall where they compete with us. The maximum price of our gas is 2s. 5d. per 1,000 cubic feet, while the maximum price charged by the company in Birmingham and in eight or nine other places is 3s. 6d. per 1,000, subject to a discount of 5 per cent. for prompt payment. Thus, by means of our competition, Walsall, as compared with Birmingham, is saving about £6,000 a year—or a sum equivalent to a rate of over two shillings in the pound on all the assessable property within our district. Another point of special interest appears in our petition. Bloxwich, Harden, Goscote, and other places within the municipal borough of Walsall, are not within our area of gas supply, those places having been, when our Act was passed, rural villages much less populous than they now are. But Bloxwich and these other places now form a considerable portion of our borough, and as they lie within the company's limits they are supplied with the company's gas, without the benefit of our competition. The result is the inhabitants of one part of the borough pay nearly 30 per cent. more for gas than the inhabitants in the other parts of the borough. The gas supplied to Walsall is made at works situate several miles distant; and as Walsall and Bloxwich lie at a distance from and unconnected with other places within the company's limits, the omission of Walsall and Bloxwich from such limits would occasion no severance of connecting works, or in any way inconvenience the parties supplying any other

town. We therefore ask for such severance, and strongly object to the transfer of the company's works to the corporation of Birmingham, because we say that the entire control of the gas supply within our municipality ought to be vested in us. It would be neither equitable nor consistent with the principles of local self-government to confer on the local authorities of one large town compulsory powers to open and break up streets and thoroughfares in another and smaller town, for the purpose of enabling the larger town to compete with the smaller town in the manufacture of gas, and virtually to levy rates on the inhabitants of the smaller town for the benefit of the larger one. At present the supply of gas at Walsall is in the hands of the commissioners, but the corporation are willing to undertake the public and private lighting of the whole municipal borough, while the commissioners are willing to transfer their gas undertaking to the corporation for that purpose.

Wilkins, Parliamentary Agent (for local boards of Smethwick and Balsall Heath): Smethwick is about three miles from Birmingham; Balsall Heath adjoins Birmingham. I pray in aid the arguments of counsel on behalf of the other local boards.

Littler, Q.C. (for promoters): It is true we schedule the agreement to sell, but we do not by the bill confirm the agreement, because it does not want such confirmation. Clause 3 is expressly drawn in order to avoid any confirmation. The ordinary words used are, "The agreement scheduled is hereby confirmed." But we say, "The scheduled agreement shall be carried into effect by the company and the corporation, subject and according to the provisions of this Act, and for that purpose the corporation and the company respectively are hereby authorised and empowered to do all things necessary and proper for giving full effect to the stipulations of that agreement, with the lawful incidents and consequences thereof."

Mr. RICKARDS: The clause may be a confirmation of the agreement though it does not use the word "confirm."

Littler: It has been thought prudent, instead of having an agreement under seal, to schedule it to the Act, lest we might suddenly discover some incidental arrangements which were necessary or desirable which could not be done without the scheduling of the agreement. But the agreement is already made, and not one of the petitioners says it is *ultra vires*, or beyond the Act of 1845. Every one of its provisions is authorised by the Act; it does not want confirmation, nor do we confirm it.

Mr. RICKARDS: Clause 3 has some virtue or other, I suppose. The promoters were not quite satisfied to let the matter rest upon the agreement, and they therefore seek to give it a legislative sanction.

Sir Mordaunt Wells: The Act of 1845 does not say a word about any statutory confirmation of the agreement. But clause 9 of the agreement says, "Such sanction or authority of Parliament shall be applied for by the corporation as may be necessary, or may be reasonably required." That is the new state of things.

Littler: The bill does not authorise the corpo-

ration and the company to enter into an agreement. The agreement is entered into, and the bill merely empowers them to do all things necessary and proper for giving effect to the stipulations in the agreement—to affix the common seal, for example, if such authority were required, or any other incidental act of that nature, a provision entirely different from clauses confirming an agreement giving new powers. Section 194 of the Act of 1845, authorises the company to sell and the corporation to buy under such terms and conditions as may be agreed upon between the parties." There is the fullest power on both sides; and if the corporation had possessed the necessary funds, we need not have come to Parliament. It is said that Parliament never could have intended that this power should be exercised after lying dormant for 30 years; but the Act of 1845 contains no limitation of time. The company and corporation are empowered to act at all times, and an alteration of circumstances does not alter the effect of an Act of Parliament. The agreement does not contain a single word which is not covered by the Act of 1845. It carefully preserves all existing rights and obligations, fixes a price, as the Act empowers the parties to do, and contains nothing which affects the petitioners.

Mr. RICKARDS: What the local boards say is that, since the passing of this Act, 30 years ago, new interests have grown up, and new positions have arisen, and that circumstances affecting third parties have materially changed. The petitioners ask for a legislative sanction to the transfer now proposed, which would alter the position of some of these third parties.

Littler: This power is not 30 years old; it is only 11 years old. Many of these local boards petitioned against us in 1934. These boards do not appear say they did not notice that in 1923 we took power to incorporate the Act of 1845, but they were bound to look at the notice, and I have no right to say "we were asleep at the post."

Sargood: The notice in 1924 contained no reference to the power of sale.

Littler: Nor did the bill of 1924. It incorporated the old powers by incorporating the Act of 1845, and that gave you sufficient notice. The petitioners might have said "We object to the powers of the Act of 1845 being incorporated in the Act of 1924," but they did not say so, and therefore consented to the powers of 1845, of which they had express notice.

Sir Mordaunt Wells: Was it not then necessary that notice of an intention to incorporate the Acts covered a previous Act, and that you were aware of it?

Littler: It was for parties concerned in the matter what the notice covered. If you think of it as nothing, it was your own fault. The petitioners only come here to get the benefit of the bill, directly what others have sought to prevent. All these local boards say they want to have their own gasworks and they want to have a clause authorising them to do so, and they do not do so, where a corporation is a body of defined limits and have no power to extend themselves. In one respect, they want to have an advantage by being able to incorporate the Acts of 1845 and 1924, and they do not want to have the Acts of 1845 and 1924 incorporated in the bill.

liament to establish gasworks competing with a company, but not with a corporation. The *Wigan Improvement Bill* is on all fours with this case; and local authorities or consumers were not allowed to oppose similar bills in the following cases:—*Stockton Gas Bill* (Smeth. 177); *London Gas Bill*, *Ib.* 178; and *Sheffield Water Bill*, *Ib.* 179. The reserve fund is said to be intended for keeping down the price of gas, but it is also for the purpose of equalising dividends; it is made up of undivided profits. The corporation will be liable to all the restrictions and obligations to which we are liable, and the petitioners therefore have nothing to apprehend on this score. Where there is a change in the taxing powers, petitioners have a right to be heard, but where there is a mere transfer of the power from one body to another, who will be limited by exactly the same obligations, they have no right to be heard. This principle distinguishes the case from the *South London* case. The *Clyde Lighthouses Bill* really involved an increase of rating, and in the *County Down* case there was a new taxing power.

Mr. RICKARDS: Not only a new taxing power, but a different kind of tax.

Littler: The *Abordare* case was one of two competing companies. In the *Watford* case the petitioners got a *locus standi* because the objections were not good. The *Stafford Water Bill* took power to raise the rates, and the petitioners against the *Gas Light and Coke Bill* objected to interference with the streets. The Oldbury local board appeared against our bill in 1864, and got a clause inserted (as to the deposit of a map). Walsall complains that the corporation of Birmingham will spend an unlimited sum in buying the gasworks. If so, the price of their gas at Walsall must be higher, and the corporation will be unable to compete with Walsall.

The CHAIRMAN: The Referees will hear one counsel in reply upon the *Wigan* case.

Clerk: Distinct provision was made in the *Wigan Act* of 1861, not only for the power of sale, but enabling the local board to borrow money, and providing the entire machinery for carrying into effect the agreement to purchase. In 1872 the Hindley local board, who, by the legislation of 1861, were only partially within the district of the *Wigan* gas company, obtained power to exempt themselves entirely from the control of the company, and to supply themselves with gas.

Mr. RICKARDS: The Referees decided the Hindley petition upon the ground that the Act of 1872 took Hindley altogether out of the bill.

Clerk: Pemberton complained of increase of price and badness of supply; but it was perfectly clear that nothing in the bill altered the existing state of things, except clause 83 (increasing price), which was struck out by the promoters, and except only that the power of compulsory purchase was limited to twelve months after the passing of the bill. No fresh machinery was provided for carrying out the agreement contemplated by the Act of 1861; nor was Parliament asked to sanction any specific agreement. Thus nothing more was done than to limit the time within which the agreement contemplated in 1861 could be carried out; and Pemberton

was not affected in the slightest degree by last year's legislation, the power of agreeing and the machinery for carrying out the agreement having been provided thirteen years before. On the other hand, in the *Birmingham Act* of 1845, only the bare power of agreeing is given—there is not a word enabling the corporation to raise money and the parties to carry out the agreement. Under such circumstances, are the company and the corporation to exclude us from a hearing against a proposal to supply the deficiencies of the Act of 1845, however vicious the agreement they now produce, however inconsistent with the principles which now govern legislation upon gas supply, and whatever our interests in the subject-matter of that agreement? Parliament will hardly say that, because this defective power existed in an Act passed thirty years ago, we, representing outside districts, are to be silent upon an attempt made to supplement that Act, though the population of some of these districts may have quadrupled since 1845.

Mr. RICKARDS: The decision of the Referees in the *Pemberton* case turned very much upon the terms of the *Pemberton* petition. There were general allegations in the petition that the price was excessive; and the argument of Mr. Stephens turned mainly upon the question of price; but the petition contains no distinct allegation that *Pemberton* will be injuriously affected. There is no such uncompromising objection to the scheme of purchase as we find in these petitions. *Pemberton* seemed rather to say, "If you are going to sanction the purchase, put in this and that clause, requiring the promoters to lay down new mains, or supply us with gas in bulk;" and the inference would be that they mean, "If you put in all those clauses, we do not object to the bill."

Clerk: And they could not very well have objected, because there was no specific agreement before Parliament. No scheme was presented for which sanction was asked. The promoters were merely going for compulsory instead of permissive powers.

Mr. RICKARDS: We gave a *locus standi* to *Pemberton* as to price, but we regarded the other allegations in the *Pemberton* petition as either objections to past legislation or as containing suggestions as to what clauses should be inserted in the bill if the proposed purchase were sanctioned; the petitioners seeming to shrink from the distinct allegation that the district they represented would be injuriously affected by the proposed purchase.

Littler claimed the right of reply, but after argument,

The CHAIRMAN intimated that when a case cited for the promoters was afterwards commented upon by counsel for the petitioners, the promoters' counsel had no right of reply.

Locus standi of all the Petitioners Allowed.

Petitions of (8) OWNERS, &c., AND CONSUMERS IN THE DISTRICT OF SMETHWICK; (9) OWNERS, &c., AND CONSUMERS IN OLDBURY; (10) CONSUMERS

"It is not essential that a meeting of consumers should be held, if the Court are satisfied that the producers constitute a fair representation of the general body."

Gas Company—Transfer—Municipal Corporation—Agreement for Sale of Undertaking to—Alternative Powers—Increase of Capital—Interests of Outsiders—Consumers—Within and Without Municipal Limits—Ratepayers or Inhabitants—Consumers distinguished from—Local Boards—Representation—Existing Power to Purchase—Variation of—Additional Objects not Allowed—Virtual Amalgamation—Monopoly v. Competition—Notice of Objections—Allegations not Traversed in—May be Assumed by Petitioners—Heading Distinguished from Objections themselves—Gas Profits—Beneficial to Ratepayers—Drawn from Consumers—Petitions in Duplicate—How far Identical—Comparison of—Practice.

A bill, promoted by a gas company to confirm an agreement for the sale of their undertaking to the corporation of B., and, in the alternative, for additional money powers to the company, was opposed by four sets of consumers of gas in districts beyond the limits of B. but within the existing gas limits of the company, and by a fifth set of petitioners "within and without the borough of B." It was objected, with regard to the first four petitioners, that the local boards of those districts were also opposing, and that the Court had granted their *locus standi*: in the fifth case, that powers to sell the gas undertaking already existed under a former Act of the company, and that the petitioners formed but a fraction of the consumers, whether "within" or "without" the borough. These latter, however, relied on the failure of the promoters to object specifically to the outsiders, some of whom were not in any local board district, and on the omission from the objections of any allegation that the petitioners within the borough were represented by the corporation:

Held, that the consumers "within and without the borough" were, and that the other sets of petitioners were not, entitled to a hearing.

Where from the schedule to a bill the fact, not disclosed in the bill itself, became apparent that the proposals there submitted really formed part of an amalgamation scheme embodied in a second bill, the Court listened to arguments showing that an injurious monopoly might thus be created, but refused

[illegible]

The objections to the writs made by petitioners (5) were, (1) the writs were being signing, do not in fact represent the interests, ratepayers, or contractors within the district, whose proper representation, the local board, have performed; (2) the agreement complained of has been made under Parliamentary powers long known and exercised by the petitioners; (3) no right, do, of theirs is interfered with; (4) no existing statutory provision is repealed; (5) no grounds exist for a hearing according to practice.

The same objections made, which were taken to petitions (1), (11), and (12), in the case of petitioners (11), similar objections to those made in the case of the petitioners (ante, 124) formed the first objection, and the remainder were as follow:--(2) as, property, rights, &c., of theirs are proposed to be taken or in any way interfered with; (3) the petitioners are a very small proportion of the race.

payers, consumers, or inhabitants of Birmingham, and in no way represent either the ratepayers, consumers, or inhabitants generally, and they have not according to practice any right to be heard; (4) the alternative power of raising additional capital by the company is a matter of internal policy; (5) there are no provisions which can operate injuriously to the petitioners, and the principle of transfer having been already ratified by Parliament, and approved by the inhabitants of Birmingham generally, they are not now entitled to be heard.

Gates, Q.C. (for petitioners in Smethwick and Oldbury): The Smethwick petition is signed by 583 owners, leasees, and occupiers of houses, manufactories, and land within the district, who allege that they are large consumers of gas, and will be injuriously affected. The objections entirely misconceive the ground upon which we claim a *locus*, apparently supposing that we seek to be heard as a representative body, whereas we come in our own right to protect our individual interests.

Mr. RICKARDS: What are the allegations setting forth the grievances apprehended by the petitioners as consumers?

Gates: If the corporation had the gas supply of our district we might be injured in various ways. Their officers, although employed partially on other work, might have their salaries charged wholly to gas. Price also might be regulated wholly by internal considerations. We complain that if the company meant to sell, they ought to have intimated their intention to the local boards, and fair terms might then have been arranged with the Smethwick local board for the portion within our district.

Mr. RICKARDS: The petitioners seem rather to suggest that the local board should have been called in? They put themselves under the patronage of their representatives, as it were.

Gates: We also suggest that if a change were necessary, a local company might have been formed. Our fear is that, the supply once in the hands of the corporation of Birmingham, we shall be made subservient to their requirements. I need not repeat these arguments on behalf of Oldbury.

Pembroke Stephens (for consumers within and without the borough): We seek to be heard as consumers only; and the signatures (*e.g.*, Messrs. Elkington, Jaffray, Nettlefold, &c.) and amounts opposite them leave no doubt as to the substantial nature of our interest. Messrs. Nettlefold alone pay £2,200 a year for gas.

Little, Q.C. (for promoters): The petitioners consume in all 1-500th of the gas produced within the borough.

Stephens: Our payments, in cases actually ascertained from the receipts, reach £10,000 a year, the total rental of the company being £209,000. The bulk of the petitioners are in the borough, but some of the largest outsiders are in places—*e.g.*, Yardley, Acock's Green, King's Norton, and Moseley—where no local boards exist.

Little: The petitioners are opposing another bill as well as ours (the *Birmingham Gas Bill*, No. 1, *post*. 141), and they have added together their consumption from both the gas companies.

Stephens: The petitions and number of signatures differ in each case, though many of the petitioners may have signed both. If the petitioners require gas from both companies, that increases their interest in the matter. There is some concealment about this bill. It professes to confirm an agreement, of which one stipulation is that all necessary acts for giving effect to it shall be done, and all expenses paid, by the corporation; whereas the company are promoting and the corporation petitioning against the bill. The bill, moreover, is silent as to any other agreement; yet schedule 8 shows that the annuities to be created will be charged on the undertaking of the Birmingham Gas light and Coke company, as well as on the undertaking of the Birmingham and Staffordshire company.

Little: This bill must be taken by itself, and it only authorises the sale of one undertaking. Matters outside this bill cannot be gone into, to fortify my friend's *locus*.

Stephens: The schedule to the bill discloses what the bill conceals, that a second gas undertaking is somehow to be acquired and dealt with. Hence, this is not a simple purchase under existing powers, but a new amalgamation of two companies at present in competition. Of this competition we now have the benefit, whereas we shall be hereafter at the mercy of the corporation. In all amalgamation cases the principle is involved which underlay the recommendation of the Joint Committee of both Houses (*Railway Companies' Amalgamation*, 1872) that no technical rules of *locus standi* should operate to prevent traders and other persons whose interests were affected from being heard. But, apart from other considerations, the notice of objections is insufficient. I am entitled to assume anything which the promoters have not traversed. (*Coleford Railway Bill*, 2 *Cliff. & Steph.* 277.) And no objection has been taken to the *locus standi* of consumers "without the borough."

Little: We say "the petitioners are a very small proportion of the ratepayers or consumers of gas, or inhabitants of Birmingham." It cannot matter whether they are within or without.

Stephens: The context shows that the "ratepayers" must be ratepayers of Birmingham.

Mr. RICKARDS: In the heading of the objections, the promoters say that they "intend to object to the right of consumers of gas and others within and without the borough;" but in the third objection they only say "the petitioners are a very small proportion of the ratepayers or consumers of gas or inhabitants of Birmingham."

Stephens: They tell us, in fact, that they intend to object to the outsiders, but they fail to do so afterwards.

The CHAIRMAN: You require us to read the words very strictly.

Stephens: The next point, as to petitioners "within" the borough, is clear. It is nowhere objected that the corporation represent us.

Little: We say of the petitioners that they "in no way represent either the ratepayers or consumers of gas, or inhabitants generally."

The CHAIRMAN: But you do not say that

other persons are the proper representatives of the petitioners?

Littler: I take it, that is not necessary. All that we do in our objections is to give them notice of what we intend to argue.

Stephens: The point is taken as to the other petitioners that they are represented by their local boards. And I am entitled to rely on anything not contained in the notices of objection here. As to those of the petitioners not in the district of any local board, the argument of representation is out of the question. When these different gas bills go before Committee, they will all be opened as parts of the same scheme: and we must be present to protect our interests. Large gas profits made by the corporation, and applied in reduction of the general rates of the town, may be very welcome to the body of small ratepayers, who are not perhaps gas consumers at all: but these gas profits must come out of the pockets of my clients who have not, as gas consumers, any voice in the election of the corporation. Accordingly the interests of gas consumers, as a class, are very different from the interests of ratepayers as a class, and the corporation—even if they said so—would not represent us.

Granville Somerset, Q.C. (for iron-proprietors, &c., in West Bromwich): The petitioners represent a whole class. They are proprietors of ironworks and other large manufacturing and trading establishments, whose united consumption during the past year amounted to 10,000,000 cubic feet of gas, or one-tenth of the whole of the gas consumed in West Bromwich, our payments last year being about £2,000. We object to the proposed transfer, and point out that under another bill (the *Birmingham Corporation Gas Bill*) it is sought to increase the maximum price whilst removing the existing limit upon dividend.

Littler: That is an argument against the other bill, not this.

Somerset: Both bills must be read together and the clauses compared, otherwise the promoters will get advantages behind our back.

Mr. RICKARDS: We can see that there is a relation between this bill and another bill, and have listened to an argument that the two together may establish an injurious monopoly. But we cannot allow counsel to go into particular clauses of the other bill which is not yet before us.

Somerset: We are perfectly satisfied with things as they are; but if a change is to be made, we say—let us be supplied by our own local authority, so that we may participate both in the management and the benefits derivable, instead of being transferred to the Birmingham corporation, who will make as much profit out of us as possible, and, with a view to monopoly, are buying up another company in Birmingham. The bill contains alternative powers to the promoters to raise additional capital; if this is allowed, it may have the effect of swelling the price to the corporation, and ultimately, of course, the price of gas. The West Bromwich local board have properly to do only with the public lighting; and consumers have been heard in addition to local boards:—(*South London Gas Bill*, 1872,

2 *Cliff. & Steph.* 220; *Alliance and Dublin Consumers' Bill*, 2 *Cliff. & Steph.* 176.)

Sir Morlaunt Wells (for ratepayers, &c., of Tipton): This case is on all fours with the *South London Gas Bill*. We are not represented by the local boards, for we have no power to make them adopt any particular course. The company being absorbed in the corporation, it is a case of amalgamation.

Littler, Q.C. (in reply): Two sets of people cannot be heard in respect of the same thing; and all the local boards that have been admitted alleged that they represented the gas consumers in their respective districts.

Sargood, Serjt.: The Oldbury board did not say so.

Mr. RICKARDS: These petitioners are not bound by what the local boards may have said.

Littler: If not as representatives of the gas consumers, in what capacity were the local boards heard? The allegations in the petitions from each locality are absolutely identical.

Sargood: I object to a discussion of the contents of petitions in a former case which has been heard and decided.

Littler: Petitions from the same locality, through the same agents, on the same subject, and against the same bill, are admissible in considering these petitions.

The CHAIRMAN: The *Referees* think Mr. Littler is entitled to refer to the other petitions. But to read them all would be *superfluous*.

Littler (having compared some of the petitions): Save for the suggestion that a private company might be formed, which could easily emanate from a local board, these petitions merely echo the views of the local boards respectively. The petitioners do not allege that they are a majority of the consumers, or have anything to do with the question of gas supply, but merely put forward individual complaints. Take the case of a district with 1,000 consumers. Would they be entitled to a hearing in batches of 50, and should we be put to the expense of fighting each set? The *South London* case was an amalgamation of two companies; new capital was to be raised with a 10 per cent. preference, and the proportion of petitioners was very different from what it is here. As to the consumers "within the borough of Birmingham," they are in no different position from the ratepayers, who at a meeting sanctioned the promotion of the bill.

Stephens: Not this year.

Littler: That is immaterial under the Local Act of 1851. The corporation are also petitioning against the bill, on the ground that it does not carry out the agreement with the company.

Mr. RICKARDS: It is contended that the corporation in this matter may have an interest which is not identical with the interests of consumers of gas. The ratepayers, as ratepayers, may, accordingly, have approved of a bill which is beneficial to them, and which yet may not be beneficial to the consumers of gas, as distinguished from the ratepayers generally?

Littler: Then the consumers in their petition should either have claimed to be a majority, or alleged that they represented the consumers, or that there had been a meeting.

Stephens: I am prepared to show that a meeting of consumers was held.

Mr. RICKARDS: It is not essential that there should be a meeting.

Littler: There should be something to show that they represent the body of consumers.

Mr. RICKARDS: We must be satisfied that they form a fair representation.

Littler: There are probably 50,000 consumers of gas in Birmingham, and but 192 signatures to the petition, including outsiders; this is little enough in the whole, so the proportion of outsiders must be ridiculously small. As to the other bill, it is not before the Court at present. How can the fact that it may give additional security to our acquitants do any harm to the petitioners?

The REFEREES (after consultation) Allowed the *locus standi* of the Consumers "within and without the Borough of Birmingham," and Disallowed the *locus* of all the remaining Petitioners.

Agents for Owners, Consumers, &c., in Smethwick and Oldbury, *Wilkins & Blyth*.

Agent for Consumers, &c., of Gas in Tipton and West Bromwich, *Cooper*.

Agent for Consumers "within and without the Borough," *Lewin*.

Petitions of (13) THE LONDON AND NORTH WESTERN and GREAT WESTERN RAILWAY COMPANIES; (14) MIDLAND RAILWAY COMPANY; (15) COMPANY OF THE BIRMINGHAM CANAL NAVIGATION.

Practice—Inter-dependent Bills—Reply—Allowed to more than one Counsel—Reply by Counsel for Bill not under consideration.

Gas—Transfer of Undertaking—To Municipal Corporation—Railway Rating—Exemption of Three-fourths—In what Cases Allowed—Borough Fund—Gas Annuities charged on—Borough Rate—Borough Improvement Rate—Sanitary Acts—Urban and Rural Sanitary Authority—Distinction as to—Public Health Act, 1848—12 and 13 Vict., c. 94, s. 8—Local Government Act, 1858—Municipal Corporations Act—Municipal Corporation Mortgages, &c., Act, 1860—Public Health Act, 1872—Gas, Water, and Sewage—Distinction between for Rating Purposes—Contingent Liability to Taxation for Gas Purposes—Public Lighting—Railway Companies as Gas Consumers—As Ratepayers—Representation—Distinct Interest—Gas Committee—Municipal Gas Accounts—Separation of.

A gas company promoted a bill authorising the transfer of their undertaking to a municipal corporation, and the corporation promoted a bill to carry out the agreement. The two bills came together before the Court, but were considered separately. Against the

first, petitions were presented by railway companies, complaining of the rating to which they might be subjected if the transfer were sanctioned; and counsel were heard for the petitioners, and for the gas company in reply. Application being made by counsel for the corporation for liberty to make a second reply to the case of the railways, inasmuch as the question affected the corporation and not the gas company:

Held, that, as the interests of the corporation and not those of the gas company were involved, counsel might address the Court on behalf of the corporation, though the question did not arise on the corporation bill, and this bill was not at the time under consideration.

Three railway companies and a canal company, gas consumers and large ratepayers in the town of B., opposed a bill promoted by a gas company for the transfer of their undertaking to the municipal corporation. In the event of the gas rental, after such transfer, being insufficient to meet the interest of money and the cost of management, the borough fund would be liable, and the petitioners would be called on to contribute towards making good the deficiency, upon the full annual value of their property within the borough; whereas, under a Local Improvement Act, the public lighting of B. was paid for out of the borough improvement rate, and the petitioners were rated for this purpose only to the extent of one-fourth. The petitioners urged that, if the contingent liability arose, they were entitled to the same exemption of three-fourths in respect of it, which they now enjoyed under the Sanitary Acts and the Local Improvement Act; and they also asked for guarantees for the continuance of this exemption as to public lighting. The promoters and the corporation replied that the bill made adequate provision for the continuance of this partial exemption, but that the petitioners were claiming to extend generally an exemption hitherto limited to taxation for sanitary purposes. Further, it was objected that, in respect of the contingent liability to contribute to the borough fund, the petitioners were in no different position from other ratepayers, and that neither as ratepayers nor as gas consumers had they any distinct interest:

Held, that the petitioners had no *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no right, property, or interest of theirs will be taken or interfered with; (2) the bill merely carries into effect an agreement for the transfer of the gas undertaking to the corporation of Birmingham; such transfer being made under existing statutory authority, in no wise altering the position and liabilities of the petitioners, imposing no new burden upon them, and authorising no new rate to be levied upon property in Birmingham. The apprehension of the petitioners that such transfer may increase the borough rate is unfounded, as the revenue from consumers will, as at present, if the bill passes, form an adequate fund to cover the interest on capital invested in the gasworks and the expenses of management; (3) the bill will repeal no exemption or partial exemption now enjoyed by the petitioners; (4) the petitioners are not entitled to be heard either as consumers or as ratepayers, having no distinct interests in either capacity.

Michael (for the corporation): As the question of rating raised by the railway companies affects the corporation, and not the gas company, although it arises now on the bill of the gas company, I ask to be allowed to address the Court on behalf of the corporation at the conclusion of Mr. Littler's speech in reply to the petitioners.

Aspinall, Q.C. (for the North Western and Great Western railway companies), objected.

Application Granted.

Aspinall: This agreement provides that the annuities to be paid by the corporation shall be charged, first, upon the gas undertaking and gas rates, and, secondly, upon all the other property of the corporation, and upon the borough fund and borough rate for the time being. As very large ratepayers within the borough, paying rates to the amount of some £10,000 a year, we are deeply interested in any matter which may increase our liability to rates there. Our interests, too, differ from those of inhabitants and owners of property generally, and changes which may be of advantage to them may not benefit us. Thus the respective lines of the two companies, each passing for five miles through the borough, are not lighted with gas; and their stations and buildings are lighted solely at their own expense. In case, therefore, of a deficiency in the gas rental to meet the annuities and cover outgoings, our rates would be materially increased to make up such deficiency. We at present contribute to the full amount in the pound in respect of the borough rate. If this bill is sanctioned, and the new liability is imposed upon us for an object in which we are not interested, we ask that we may be exempted to the extent of three-fourths.

Mr. RICKARDS: Is there any case in which railway companies pay borough rates at a reduced scale?

Aspinall: In the *Birmingham Sewerage Bill*, passed by Lord Henley's Committee in 1872, the Committee introduced a clause providing for the exemption we now seek.

Mr. RICKARDS: What was the rate imposed by the bill?

Aspinall: A borough rate. We took the same objection there as we are taking here. The Legislature had provided in 1851 that all the expenses

in carrying out works of sewerage should be paid out of two rates, namely, the street improvement rate and the general improvement rate; but the *Corporation Bill* of 1872 provided that the sewerage expenses under it should be paid out of the borough rate, and we urged that this was an attempt to evade the provisions of the existing law.

Littler, Q.C. (for promoters): A new rate was charged in the bill of 1872; no rate is charged by this bill. All it provides is that the borough rate shall be the ultimate security.

Aspinall: The Committee in 1872 gave us a clause providing that, if the sewerage expenses were paid out of the borough rate, we should be charged only to the extent of one-fourth. We ask for the same exemption here. Similar clauses have been inserted in other bills since 1872, e.g., in the *North Corporation Bill*, before the House of Lords last year. The corporation of Neath proposed to buy the gasworks and charge the expenses upon the borough rate; and the Lords' Committee inserted in the bill a clause similar to that in the *Birmingham Bill*.

Mr. RICKARDS: Under the present bill the borough rate will only be required to be a collateral security; and it is only so far as it may be so chargeable for the purposes of the bill that you ask to come in at a lower scale.

Aspinall: Yes. We now enjoy a partial exemption under the *Birmingham Improvement Act* of 1851, which, for public lighting, rates railways at one-fourth part only of the net annual value. We ask that this exemption should be extended to any rates which may be levied under the bill. Quite apart, however, from any rating question we have a distinct right to oppose the whole bill as a separate class of gas consumers. We pay more rates of all descriptions, and more borough rate in particular, than the whole of the other consumers whose interests have been admitted. We are not represented in the corporation, and this fact strengthens our claim to be heard as a class.

Littler: You are represented; you have a vote.

Aspinall: We cannot exercise it. The partial exemption of railway companies has been admitted in various public Acts (*Public Health Act*, 1848, section 55; *Local Government Act*, 1855; and 12th and 13th Vict., cap. 94, section 5.) Under the last-mentioned Act the powers to contract for a supply of gas for public purposes was given to public bodies constituted by the *Public Health Act*, and the expense of doing so is charged upon the same rates, which rates must therefore necessarily be subject to the same exemptions. Thus, taking these three Acts together, public legislation has recognised the right of railway companies to exemption in respect of gas supply as in other things. The *Public Health Act*, 1872 (sections 16 and 17), continues the exemption in all cases where the rating is not within a borough, but alters the exemption in places governed by corporations. The distinction is an unimportant one, and does not control the power of Parliament to deal with particular cases. In fact, in 1872, the House of Commons did deal specially with the very case of Birmingham, as regards sewerage, which is *in pari materia* with gas and water. The principle recognised in the *Improvement Act*

of 1851, and again by the Committee of 1872, holds good now. If, for the benefit of the inhabitants, but not so much for our benefit, a charge arises under the bill through this purchase, such charge ought to attach to the rate upon which we pay one-fourth—namely, the Public Improvement rate, not to that to which we are assessed at the full value of our property. Both by private and public legislation we are already exempt to the extent of three-fourths as regards the charge for public lighting; but under the bill the corporation will themselves supply the public lamps, for which they will get no return. At the same time they give full compensation to the company on their whole profits; and the borough fund will, therefore, be liable for purchase-money, without allowance for public lighting, and will bear the whole burden of the gas supply of Birmingham. There are precedents in our favour besides the *Birmingham Sewerage* and the *Neath* cases. The *Oldham Improvement Act*, 1865, provides that if the borough fund is insufficient to pay the expenses of the gas and water supply, the council are to estimate the amount of the deficiency and raise it by a borough rate; and under that Act railways are only assessed in the proportion of one-fourth. At present we are liable for water supply and sewage—kindred purposes to gas—only to the extent of one-fourth; and we have a right to contend for an exemption in this bill similar to that contained in the *Improvement Act of 1851* and the *Sewerage Bill of 1872*.

Littler, Q.C. (in reply for the gas company): The distinction between water and sewage and gas is that the two first are, while the second is not, part of the sanitary requirements of a town; and the Legislature has always recognised this distinction. As to public lighting, the bill alters nothing. After the transfer of the gas undertaking, the amount required for lighting the street lamps will still be charged to the borough improvement rate, on which the railway companies will pay their one-fourth as at present.

Aspinall: The bill contains no obligation on the corporation to charge the public lighting upon the improvement rate.

Littler: The cost of the public lighting must come out of the borough improvement rate: it is not proposed to repeal the Act of 1851 in this respect. The *Oldham* precedent is adverse to the petitioners, because there is an express provision in the *Oldham Act* that the corporation may provide gas for public purposes gratuitously, so that the whole cost of public lighting would come upon the borough rate. Here the incidence of taxation will not be altered, and no new rate will be imposed.

Mr. RICKARDS: There is a contingent liability to an increase of the borough rate?

Littler: How is that to be ascertained? The petitioners are now rated to the borough rate, and have no exemption. How are they differently situated to any other ratepayer or gas consumer? As consumers they cannot be damaged because, while the present limit of profit is not varied by the bill, any deficiency in case of loss will be paid for out of the borough rate. As ratepayers they are concluded by the *Sheffield*

Corporation Water Bill, Petition of Railway Companies (2 Cliff. and Steph. 56).

Mr. RICKARDS: You are embarking in what may be considered a speculative undertaking. Suppose it turns out a losing concern in the hands of the corporation, that loss must be reimbursed out of the borough fund?

Littler: Yes. Then arises the question—are the petitioners in a different position from any other ratepayers *quoad* the borough fund? There is no distinction between this and the *Sheffield* case; and as to the *Neath* case, no objection was raised to the appearance of the petitioners.

Aspinall: There was a discussion on the *Neath* case in the House of Lords, and after discussion the *locus standi* of the railway companies was allowed.

Littler: At all events the decision of a Committee of the House of Lords on a question of *locus standi* does not bind this House.

Mr. RICKARDS: Was that water or gas?

Aspinall: The clause obtained applied to gas only.

Littler: The objects of the Act of 1851 were draining, public lighting, and street improvements, all objects in which railway companies are not so largely interested as ordinary occupiers. The Public Health Act, 1872, provided that all expenses, except those for sanitary purposes, should be charged to the borough fund. The railway companies, therefore, are here seeking to extend the existing exemption in Birmingham, which applies to matters of taxation not *ejusdem generis* with gas supply, and to escape from the provisions of the general law. The *Sheffield* case was a water case, embracing, in part, a sanitary object; it was, therefore, not so strong against the railway companies as this, while the risk to the borough fund was far greater. As to the *Birmingham Sewerage Bill* of 1872, its objects were akin to those of the Public Health Act, to which the object of the present bill is quite foreign.

Michael (in reply for corporation of Birmingham): The utmost that can be said here is that there is a contingent liability to contribute towards the borough fund, but you must balance against it the contingent profit to the ratepayers. No doubt, between 1848 and 1872, the Legislature enacted the partial exemption of certain classes of property supposed not to derive so much advantage as other classes of property from the expenditure of public money, but this exemption applies to purposes contemplated by the sanitary Acts, and the providing of gas is not a sanitary purpose. This case does not fall within the purview of the Sanitary Acts, or of the Birmingham Improvement Act, and, therefore, there is no ground for exemption. The Municipal Corporation Mortgages, &c., Act, 1860 (23 and 24 Vict., c. 16, s. 8) authorises a corporation to purchase for public purposes the lands and works of a gas company; and if it were not necessary for other purposes to come to Parliament for a special Act, corporations could carry out these powers without further statutory authority, charging the cost upon the borough rate. So far, therefore, as analogy goes, the borough

rate is to be made chargeable in case of gas purchase. As to the cost of public lighting, the bill does not change the law in this respect. The corporation will contract with the gas committee for the public lighting, the cost of which will be borne by the borough improvement rate. In all boroughs there is a continual interchange of these accounts; particular rates are debited or credited with the particular amounts applicable to them. The rates cannot be muddled up. A separate account must be kept of all moneys received and paid, and where there is a borough rate and a borough improvement rate for special purposes, the two accounts must be kept distinct. Here there are two rates and two interests, and clause 20 of the bill (application of gas revenue) provides for separate accounts. Moreover, the Municipal Corporation Act provides prompt remedies whenever any improper payment is made out of the borough fund. In all cases where rate-payers have been allowed to appear against corporations, the existing incidence of taxation has been altered by the bill. That was so in the *Cardiff Improvement Bill* (2 Cliff. & Steph. 154), where the railway companies were admitted because the bill altered the ratio of exemption. There is nothing of the kind here. The railway companies enjoy no exemption at present, and would have no exemption under the General Acts. If the bill subjects them to a contingent liability, it is one which applies to them, not as a railway company, but simply as ratepayers. But as ratepayers they are represented, and have no right to be heard; and they fail to establish a distinct interest either as consumers or rate-payers.

[The petitions of the Midland railway company and of the Birmingham canal navigation company involved the same principle, and were not argued, the decision of the Referees in this case being accepted as governing them.]

The CHAIRMAN (after deliberation): The *locus standi* of the London and North Western and Great Western Railway Companies is *Disallowed*. The *locus standi* of the Midland Railway Company is *Disallowed*. The *locus standi* of the Company of Proprietors of the Birmingham Canal Navigation is *Disallowed*.*

Agents for Bill, *Martin & Leslie*.

Agent for London and North Western and Great Western Railway Companies, *Roberts*.

Agent for Midland Railway Company, *Basle*.

Agents for Birmingham Canal Navigation Company, *Martin & Leslie*.

* The arguments here reported were repeated on behalf of the same petitioners, and with the same results, against the *Birmingham Corporation Gas Bill*, March 22. Against the same bill the *locus standi* of "Consumers within and without the borough," and of the Local Boards, &c. (see p. 129), was allowed without argument.

BIRMINGHAM GAS (No. 1) BILL.

Petition of (1) CONSUMERS WITHIN AND WITHOUT THE BOROUGH.

22nd March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. PEMBERTON, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Gas Companies—Amalgamation of—Agreements with Third Parties—Inconsistent Schemes—Competition—Monopoly—Representation—Double Petitions—Consumers—Corporation—How far Consumers Represented by—Amalgamation Distinguished from Sale by Company.

A bill promoted by a gas company for the fusion and amalgamation with itself of a rival gas company was opposed by consumers "within and without the borough." The corporation also petitioned, and objection was taken that the private consumers were thus represented. The corporation, however, were themselves promoting a bill for purchasing both the gas undertakings, having agreements for that purpose with the companies respectively. Against the corporation bill, and against a bill independently promoted by the rival gas company, in furtherance of the sale of its undertaking to the corporation, the consumers had already succeeded in gaining a *locus standi*:

Held, that the doctrine of representation did not apply in this case also, and that the consumers were entitled to be heard.

(*Per Cur.*) "The argument that competition will be put an end to is stronger against an amalgamation bill" (of two companies) "than against a bill giving power to one company to agree for the sale of its undertaking to the corporation."

This bill contemplated the amalgamation of the two existing gas companies in Birmingham on the 1st January or 1st July, which should first happen after the passing of the bill; and made no reference whatever to the agreements entered into by either company with the corporation, forming the basis of the two preceding bills.

The *locus standi* of the petitioners was objected to, because (1) it was not alleged that they represented, nor were they entitled to represent, consumers of gas within and without the borough; (2) the corporation being also petitioners, most of the persons signing were represented by that body, and were not entitled to be heard on a separate petition; the remainder, beyond the borough, did not represent the consumers, and

were not entitled to a hearing; (3) there was no ground for a hearing according to practice.

Pembroke Stephens (for consumers): The petitioners, with a few exceptions, are the same as in the *Birmingham & Staffordshire and Corporation Gas* cases, where their right to a hearing has been established (*ante*, 135 and 141). We have now the benefit of competition between the gas companies proposed to be amalgamated, and we contend that there is no necessity for the bill, Birmingham, with its population of 650,000, being far too large to be subjected to the monopoly sought to be created. None of our allegations on this head are traversed by the objections. The Court has now for some days been engaged in considering the agreements between these same gas companies and the corporation, but this bill takes a fresh start, ignores the agreements altogether, and proceeds upon the assumption that the companies are free to deal with each other, and to amalgamate as they like. And it is not merely an alternative scheme, in case the agreements should fail, for if this bill received the Royal Assent on the 30th June next, on the 1st of July the two companies would be dissolved and amalgamated. How can we be safe unless we are heard?

Mr. RICKARDS: The only objection taken is that the petitioners are not entitled to be heard in addition to the corporation?

Richards, Q.C. (for promoters): The corporation petition includes everything which these petitioners have to say.

Mr. RICKARDS: We have already admitted the petitioners against the other company's bill.

Richards: This is a bill of a different character.

Mr. RICKARDS: This is an amalgamation bill, and the principal objection to it is that competition will thereby be put an end to. That argument is stronger against an amalgamation bill than against a bill giving power to a gas company to agree with the corporation.

Richards (in reply): The cases are to be distinguished. Between the sellers and the consumers of gas there is a natural antagonism; when, therefore, the corporation are seeking to become purchasers of the gas company, consumers may properly be heard. But here the companies are proposing to amalgamate, and the corporation, whose *locus standi* is admitted, can urge every objection capable of being urged by the consumers, their interests being absolutely identical. The whole gist of the present petition is the question of competition. The corporation are perfectly competent to support that allegation.

Stephens: We know nothing of the corporation petition. Our case is that the corporation have schemes of their own.

Richards: But everything the petitioners can allege against amalgamation of the companies, it must be assumed that the corporation will also allege. If so, the petitioners fall within the principle constantly laid down by the Court that persons living within the jurisdiction of a corporation or local authority cannot be heard unless they appear in sufficient numbers to constitute a representative body, or unless they advance a reasonable ground of complaint not

embraced in the petition of the local authority. The united gas payments of the petitioners here are only one-thirtieth of the aggregate gas rental of the companies; and there are only five or six consumers "without the borough."

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed.

Agent for Petitioners, *Lawin*.

Petition of (2) WALSALL IMPROVEMENT COMMISSIONERS.

Gas Companies—Amalgamation—Improvement Commissioners—Supply of Gas by—Competition—Same District Supplied by Companies and Local Bodies—Purchase of Part of Undertaking by—Practice—Local Authority—Signature by Clerk, on behalf of—Common Seal, absence of.

A bill to amalgamate two existing gas companies was opposed by improvement commissioners who supplied with gas the town of W. The area of supply of one of the amalgamating companies also included the town of W., and the petitioners alleged that the result of the amalgamation would be to increase the existing competition there, and enable the amalgamated companies to drive them out of the field by supplying gas at unremunerative prices:

Held, that the petitioners were injuriously affected by the bill, and were entitled to a *locus standi*. (And see *ante*, p. 129.)

It was objected to the petition of certain improvement commissioners, acting under the authority of a Local Improvement Act, that the signature of the clerk to such petition was insufficient, and that the commissioners could not authorise their clerk to petition on their behalf. It appeared, however, that the commissioners had no common seal, and, upon that fact appearing, the objection was withdrawn.

The *locus standi* of the petitioners was objected to, because (1) the petition is not, as it purports to be, the petition of the commissioners, being signed only by their clerk, who professes to sign with their authority, but they cannot authorise their clerk to petition the House of Commons on their behalf; (2) the petitioners do not show that any such competition would result from the bill between themselves and the gas companies as would entitle them to be heard; (3) they have no sufficient interest in the bill entitling them to appear against it.

Clerk, Q.C. (for petitioners): The bill proposes the amalgamation of the Birmingham and Staffordshire gas company (which has a very large area of supply, including the town of Walsall) with the Birmingham gas company, which is at present confined to the limits of the municipality. The Walsall improvement commissioners consist of the mayor, aldermen, and town councillors, with three other persons elected by owners of property and ratepayers in Rushall, a parish which forms part of the town of Walsall, but lies outside the municipal borough. We now supply the municipal borough with gas at a low rate. In 1859 the Staffordshire company, in pursuance of power obtained in 1825, laid down their gas mains through the streets of Walsall, and have ever since competed with us. Now they are going to bring in another gas company, and we, on the other hand, ask that we should be allowed to buy out the Staffordshire company, and so obtain the entire control of the gas supply within our district.

Mr. RICKARDS: How will the amalgamation prejudice the commissioners?

Clerk: We say that the amalgamation of the two companies, with a united capital of a million and a half, would enable them to destroy all competition, and so inflict material injury on us and on the inhabitants we represent. For example, in order to drive us out of the field, they might reduce their prices in our district, below that at which we could afford to supply gas. Our capital is only £50,000, a trifling sum in comparison with the capital of the amalgamated companies. Both the commissioners and the corporation of Walsall are ready to undertake the public and private lighting of the district, and can do so at a cheaper rate than would be charged by the amalgamated companies. If even the Staffordshire companies were proposing to enlarge their works and increase their capital, we should be entitled to be heard, not merely as private persons manufacturing gas, but as persons charged with public interests, because such increase of capital would make it more difficult for us to purchase the works under the provisions of the general law. As to the technical objection that the petition is invalid because signed by the clerk, the simple answer is that the commissioners have no common seal.

Richards, Q.C. (for promoters): Then I withdraw the first objection. The petitioners do not seem to fear competition, for they say they are ready to undertake the supply of gas in Walsall at a cheaper rate than would be charged by the amalgamated companies. Why, then, need they fear the amalgamation? It would make no change in their position. They must show a reasonable grievance. It is not enough for them to imagine so improbable a contingency as that the amalgamated companies will seek to drive them out of Walsall by supplying gas at a ruinous price there and raising the price elsewhere.

The CHAIRMAN: The *locus standi* of the Walsall Improvement Commissioners is *Allowed*.

Agent for Bill, G. Norton.

Agents for Petitioners, Darnford and Co.

BIRMINGHAM WATER BILL.

Petition of (1) LOCAL BOARDS FOR THE DISTRICTS OF THE MAYOR OF ASTON AND HANLEY WORKS.

17th March 1875 — Before Sir J. ST. JOHN, M.P., Chairman; Mr. PIMBERTON, M.P.; and Mr. RICKARDS.)

Water Company—Transfer of Undertaking—To Municipal Corporation—Purchase Money—Reserve Fund—Separate Accounts—Water Rates—Supply Outside Municipal Limits—Local Board Representing Outside Consumers—Interference—Consumers—District Interest—Surplus Profits—Application of, by Municipality—Limitation of Profits—Compliance with Past Legislation.

In 1851 the B. Improvement Act authorised the corporation of B. to purchase at any future time the undertaking of the B. water-works company, for a sum not exceeding £250,000; and the corporation now promoted a bill to carry out the purchase, and to raise for the purpose the sum of £1,000,000. The petitioners were a local board, whose district was within the company's limits of supply, and they alleged that, there being in the bill no limit of price or of profit, the consumers whom they represented outside the municipality might be charged an unreasonable price for the water supplied, in order to swell the profits of the corporation, and lighten the municipal rates. They also contended that the reserve fund, fixed at £50,000, was excessive, and that surplus profits, instead of being paid to the credit of the borough fund, as provided in the bill, should be applied in reducing the price of the water:

Held, that the petitioners were entitled to a *locus standi*.

The bill recited section 109 of the Birmingham Improvement Act, 1851, which authorised the corporation, after twelve months' notice to the water company, to buy the undertaking of the water company, upon such terms as might be agreed upon, or by arbitration under the Lands Clauses Consolidation Act; and section 141, which authorised the council to borrow a sum not exceeding £250,000 for the purchase, on security of the water rates and water undertaking. The bill now proposed to raise £1,000,000 for the purchase. It also contemplated (clause 27) the establishment of a reserve fund of £50,000 for contingencies, and after this sum was reached, surplus profits were to be paid to the credit of the borough fund.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken, and no rights, &c., prejudicially affected; (2) this bill will confer on the corporation of Birmingham no powers within the petitioners' district not now possessed by the Birmingham water company, and they will be bound by the same obligations; (3) the corporation are empowered by the Birmingham Improvement Act, 1851, and by the Sanitary Acts, to purchase and hold the undertaking of the water company, and the petitioners' objections, therefore, apply to past legislation; (4) the provisions of the General Acts with reference to the limitation of profits are inapplicable to the case of waterworks vested in a municipal corporation, and it is the practice of Parliament not to apply those provisions in such cases; (5) the petitioners cannot be heard consistently with practice.

Clerk, Q.C. (for petitioners): We fear that, if this transfer is sanctioned, our water supply may be sacrificed to that of Birmingham, and the bill ought to provide that we should be as well supplied as at present. The price to be given for the undertaking is four times as much as the corporation contemplated giving, and is so enormous that they can only recoup themselves by charging higher prices, at all events outside the municipal limits. We wish for clauses to protect us from this contingency; to give us the benefit of all profits; and require the corporation to keep proper accounts, showing the quantity and value of the water consumed, and debiting themselves with the full value of the water used for public purposes. This bill proposes (clause 27) the creation of a reserve fund of £50,000, and afterwards to carry to the credit of the borough fund any balance over that sum. This provision is directly opposed to the practice of Parliament, which requires that surplus profits derived from waterworks should be applied in reducing prices. We submit that the reserve fund is too large, and that all surplus profits should go towards a rateable reduction in the price of water both within and without the borough. The company must reduce the price after a certain dividend is reached. The corporation are under no limitation as to price, and may carry surplus profits to the credit of the borough fund in which, as outsiders, we have no interest. The promoters object that it is not the practice of Parliament to limit profits in the case of a corporation.

Mr. RICKARDS: That is the very thing you complain of?

Clerk: Yes. If the area of supply included Birmingham alone, the point would be immaterial, because ratepayers being consumers must get the benefit either in reduced price or reduced rates; but we outside the municipality have an interest in seeing that an unreasonable price is not charged us for water in order that large profits may be made, to be expended for objects from which we derive no advantage.

Michael (for promoters): In the transfer of a gas undertaking, questions arise about pressure, purity, quality, and other matters which are under the control of the persons supplying gas. But the question here merely concerns the dis-

tribution of the article to be supplied, and whether the distributors shall be a company or a corporation. Under the Waterworks' Clauses Act, the company, before price can be reduced, may raise a reserve fund of £100,000, in order to meet contingencies, whereas we limit ourselves to a reserve fund of half that amount. The change, therefore, is one in the interest of the petitioners. The suggestion of excessive price is visionary. We shall stand in the shoes of the company, and be subject to their obligations. It will not be in the interest of the corporation to charge a rate greater than is sufficient to cover expenses. The purchase-money is a question not for the petitioners, but for the ratepayers of Birmingham, who do not think the amount excessive.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is Allowed.

Agent for Petitioners, *Levin.*

Petition of (2) THE LONDON AND NORTH WESTERN
and GREAT WESTERN RAILWAY COMPANIES.

Water Company—Transfer of Undertaking—To Municipal Corporation—Railway Rating—Previous Legislation—Water Rate—Three-fourths Exemption—Profits from Water Supply by Municipality—Contingent Liability for Losses—Railway Companies as Ratepayers—As Consumers—Representation.

Upon a bill to transfer a water undertaking from a company to a municipal corporation, certain railway companies complained that, the borough fund being made chargeable in the event of any deficiency in revenue to meet expenses and interest, they would be liable to contribute to the borough fund in this respect upon the full annual value of their property within the borough, whereas they contended that, according to the precedent of general legislation and under a local improvement Act, they were properly liable to water rate to the extent of only one-fourth of the full amount:

Held, that the bill only affected them in common with ordinary ratepayers, in which capacity they were represented by the corporation who promoted the bill.

The *locus standi* of the petitioners was objected to, because (1) no rights or interests of theirs will be interfered with; (2) the bill will only affect them as individual ratepayers, in which capacity they have no right to be heard; (3) the law which regulates the assessment of their property to the borough rate is not

altered or varied by the bill; (4) the monies proposed to be charged to the borough fund and borough rate are properly so chargeable, and the petitioners will not suffer because the receipts for water supply will be carried to that fund; (5) the petitioners cannot be heard according to practice.

Aspinall, Q.C. (for petitioners): We now enjoy an exemption to the extent of three-fourths in respect of all rates for sanitary purposes, and water is one of those purposes. But the bill authorises the corporation to buy these waterworks entirely upon the security of the borough fund and the borough rate, in respect of which we enjoy no such exemption. This, therefore, is a proposal to alter the existing law to our injury, and we wish to be heard to contend that the borough fund shall not be so chargeable. We do not believe that any profits will arise to the corporation under this transfer. If so, we should be pleased to surrender the right to share such profits, if the promoters will only take away from us the liability to contribute towards their losses. They are, in fact, entering into a speculation, of which they wish us to bear the risk, we not being liable to any such risk at present. Our interests differ from those of other ratepayers, for where we require water, we to a large extent furnish our own supply. By the Improvement Act of 1851, the council were empowered to levy a special water rate, besides a street improvement rate, a borough improvement rate, and certain drainage rates; and the Act provided that railway companies, amongst others, should be assessed to those rates at one-fourth.

Mr. PEMBERTON: The bill does not alter the principle of rating?

Aspinall: Yes; it charges the borough fund and borough rate in respect of the water supply.

Mr. RICKARDS: It makes the interest on the purchase-money a charge upon the borough fund and borough rate.

Aspinall: Under the Act of 1851, we are to be exempt to the extent of three-fourths from a water rate, even if we are supplied. We are not bound to take any water from them at all, and if we do not take any water from them we pay nothing. We are not now rateable to the extent of a shilling, whereas the whole of the purchase-money for the waterworks will be a charge upon the borough fund.

Mr. RICKARDS: That is your grievance as ratepayers. As regards the water rate under the Act of 1851, your position is not altered. For anything that appears on the face of the bill, you will still enjoy the benefit of the deduction of three-fourths if they supply you with water.

Aspinall: If they levy a water rate; but if they charge nothing for the water, paying the whole interest on the purchase-money out of the borough fund, then our exemption under the Act of 1851 will be entirely altered.

Mr. RICKARDS: I never heard of a case in which a corporation did not charge individual consumers for water supply either by a rate or by rents.

Aspinall: The corporation may charge nothing or they may charge an amount which would be a charge upon the borough fund and borough rate; and we say that we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable. We say that we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable.

Mr. RICKARDS: If the corporation charge the whole or the greater part of the interest on capital in the borough fund and borough rate, we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable.

Aspinall: That is a question for the Court to decide. The bill does not alter the principle of rating, which is that the water rate shall be a charge upon the borough fund and borough rate, and the interest on capital shall be a charge upon the borough fund and borough rate. We say that we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable.

Mr. RICKARDS: For purposes of the bill, we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable. The bill does not alter the principle of rating, which is that the water rate shall be a charge upon the borough fund and borough rate, and the interest on capital shall be a charge upon the borough fund and borough rate. We say that we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable. The bill does not alter the principle of rating, which is that the water rate shall be a charge upon the borough fund and borough rate, and the interest on capital shall be a charge upon the borough fund and borough rate. We say that we are entitled to be heard to contend that the borough fund and borough rate shall not be so chargeable.

The Chairman: The locus standi of the London and North Western and Great Western Railway Companies is doubtful.*

Agents for Bill, Sharpe, Parkers, Pritchard, & Sharpe.

Agent for Petitioners, Roberts.

* This decision was accepted without argument by the Midland Railway Company and the Company of Proprietors of the Birmingham Canal Navigation.

BUCKINGHAMSHIRE AND NORTHAMPTONSHIRE RAILWAYS UNION RAILWAY BILL.

Petition of GREAT WESTERN RAILWAY COMPANY.

8th March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—New Line—Traffic Arrangements—Working Agreements—User of Other Railways—Interchange of Rolling Stock—Through Traffic—Through Rates—Virtual Amalgamation—Competition—Existing made More Effectual—Local Lines, Union of—Through Route Created—Diversion of Traffic—Overcrowding of Line—Priority of Traffic Interfered With—Statutory Agreements—User of Joint Station—Outside Railway Companies—S. O. 134 (“in what cases Railway Companies to be heard”)—Railway Companies’ Locus Standi Under—Limited or General—Not Landowners’ Locus—Distinction between.

A bill for the construction of a local line, 14 miles long, authorised the promoters to enter into arrangements with eight other small companies for the transmission of through traffic, the charging of through rates, the mutual interchange of rolling stock, &c. It also enabled any one or more of the nine companies to work the whole of the respective railways, and, by means of the Metropolitan railway, which was one of the contracting companies, would establish a through route between Moorgate Street and Evesham. The Great Western railway company complained (1) that at various points of their system a practically new competition would be created under the bill; (2) that another result would be to overcrowd with traffic the Metropolitan railway, upon which, by statutory agreement, they had priority for the passage of their trains; and (3) that they were entitled to be heard against the whole bill in respect of user of a station, of which they were joint-owners with one of the contracting companies, the bill proposing to give rights of user over this station to all the associated companies:

Held, as to user of station, that, no land of the petitioners being taken, it was in the discretion of the Court to limit their *locus standi* to the particular provisions authorising such user, but that upon the other points

alleged, the petitioners were entitled to be heard generally against the bill. (See also *Post*, p. 172.)

The bill was one to authorise the promoters to construct a short line in Bucks and Northamptonshire, and to use the railways and stations of certain specified railway companies, including those of the Aylesbury and Buckingham company. It also enabled the promoters and eight other companies to make arrangements for through traffic, through booking, and mutual facilities for interchange of rolling stock. The companies in question (besides the promoters) were:—The Metropolitan railway, the Metropolitan and St. John's Wood railway, the Harrow and Rickmansworth railway, the London and Aylesbury railway, the Aylesbury and Buckingham railway, the Northampton and Banbury Junction railway, the East and West Junction railway, and the Evesham, Redditch, and Stratford-upon-Avon Junction railway companies. By clause 50, any one, two, or more of these companies might work, use, manage, and maintain the respective railways, or any part thereof.

The *locus standi* of the petitioners was objected to, because (1) no competition is shown entitling them to be heard; (2) no lands, &c., of theirs are taken; (3) they are neither owners nor lessees of the Aylesbury and Buckingham railway, nor do they work that railway, and if it be true that they carry all the traffic thereon, such traffic is carried by them not under express Parliamentary powers, but as agents of the Aylesbury and Buckingham company, or by private arrangement with them. The petitioners' rights in the joint station at Aylesbury are not affected; (4) it is true that the petitioners received notices in respect of several properties, but they are not owners, lessees, or occupiers of such properties, or any of them, and these notices were served as a matter of precaution only; (5, 6, and 7) the bill contains no provision affecting the petitioners, who allege no interests entitling them to be heard against it.

Saunders (for petitioners): This is a bill for the construction of railways in Bucks and Northamptonshire, but it ought more properly to be called a bill for the amalgamation and construction of lines from Moorgate Street to Evesham. The piece of line to be made is from near Towcester to Winslow Junction, only about 14 miles long; but by the proposed alliance between eight companies, north and south of the line, we shall be very materially affected. First, we claim a *locus standi* as owners. We are, jointly with the Aylesbury and Buckingham company, owners of the Aylesbury station; and clause 47 authorises “any company or persons for the time being using the railways of the company, either by agreement or otherwise,” to run over the Aylesbury and Buckingham, among other lines, and to use the Aylesbury, among other stations. This Aylesbury station, and the land on which it stands, are vested in trustees jointly for the Aylesbury and Buckingham company and ourselves, and we rely on that fact for a *locus standi*.

Mr. RICKARDS: The promoters do not propose to take your land?

Saunders: No; but they propose to run over the line and into the station; and on this ground we ask to be heard against the whole bill.

Mr. RICKARDS: You are not an owner, whose land is going to be taken; you are a station owner, whose station is going to be used?

Saunders: The station is not absolutely taken; it is not scheduled in the ordinary sense: but the nine companies go into it. S. O. 134 is imperative.

Mr. RICKARDS: You are to be heard under that S. O. against the provisions of the bill affecting you, "or against the preamble and clauses." It rests, therefore, with the Referees to say in such cases whether petitioners shall be heard against the particular provisions authorising the interference, or against the whole bill. In the case of a landowner, the Referees have no such discretion.

Saunders: In a case where the same question arose, the Great Western company were allowed a general *locus standi*. (*London and Aylesbury Railway Bill*, 2 Cliff. & Steph. 117.)

Mr. RICKARDS: There the Great Western were landowners.

Saunders: At all events we are entitled to a *locus standi* under S. O. 134 against clauses 47, 48, and 49 authorising the user of our joint station. We also claim a general *locus standi* on the ground of competition. The bill authorises nine companies to make mutual arrangements for facilitating the transmission of traffic over each other's lines, yet it is said the company who now compete for the traffic between the two extreme points of inter-communication are not entitled to be heard. Any one of the companies may, under the bill, work the traffic from Moorgate Street to Evesham. These lines were constructed by piece-meal legislation; and though as local lines they might not be capable of doing much damage to us, it is a very different thing when by amalgamation they become a through line from Moorgate Street to Aylesbury and Evesham in competition with us. The Great Western are also interested in Banbury, and as the Northampton and Banbury company are included in these working powers, a direct competitive route may be formed with our line between Banbury and London by way of Towcester. Again, the bill will fill up the existing gap at Winslow Junction; and at Penny Compton and Stratford-upon-Avon we should also be in competition with these companies. Under the Great Western Act of last year we have power to acquire the Aylesbury and Buckingham line by agreement; we have also permissive powers to work it under statutory agreement for ten years. We also claim a *locus standi* on the ground that the traffic facilities now proposed to be given will interfere with our user of the Metropolitan railway. On several occasions Parliament has absolutely refused to grant additional facilities to outside companies when these facilities would interfere with existing traffic. The cases recognise the right of the Great Western company and all companies interested in the traffic over the Metropolitan railway, to be heard against any proposal for admitting other com-

panies over this crowded line into the heart of the city.

Mr. RICKARDS: In the case of other railways we have held that because A has running powers over line B, company A has no *locus standi* to object to company C having similar powers.

Saunders: The position of the Metropolitan railway differs from that of other lines, owing to the number of trains and the strain upon the capacity of the line.

Sir Mordaunt Wells (for promoters): I concede to the petitioners a limited *locus standi* against the provisions in the bill authorising our user of the Aylesbury station. But as to their traffic on the Metropolitan railway, they cannot well enjoy greater protection than they possess under existing agreements. Hundreds of trains pass over the Metropolitan line daily, and those that may be added by the bill will make no appreciable difference in the traffic. As to the relations of the petitioners with the Aylesbury and Buckingham company, they have no proprietary rights in the line; they are only under an ordinary working agreement. Nor can the petitioners complain of competition, because only last year the most important link in the chain formed by all these companies was passed without any opposition by the Great Western. It is possible that hereafter a small portion of through traffic may be abstracted from the North Western or Great Western railways, but this does not give either company a right to complain of what is a mere development of existing competition.

The CHAIRMAN (after deliberation): The *locus standi* of the Great Western Railway Company is Allowed.

Agent for Bill, Rees.

Agent for Petitioners, Mains.

CARMARTHEN GAS BILL.

Petition of OWNERS, LESSEES, AND OCCUPIERS OF PROPERTY, AND CONSUMERS OF GAS IN CARMARTHEN.

3rd March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Gas—Owners and Consumers—Increase of Price—Repeal of Section of Former Act—Corporation not Petitioning—Alteration in Status—Representation—Practice—Heading of Petition—Statements made *arguendo*—Sufficiency of Signatures.

This was a bill enabling the Carmarthen gas company to increase the maximum price of gas, as fixed by their existing Act, and to raise additional capital. The petition was signed by 424 persons, describing

themselves as owners, occupiers, and consumers, who complained of both these provisions in the bill, and alleged that it would be for the interest of the inhabitants if the supply of gas were in the hands of the corporation of Carmarthen. The corporation, however, took no part for or against the bill. It was objected that they were the proper parties to represent the inhabitants, and it was also stated, *arguendo*, that one-half the petitioners were not gas consumers:

Held, that in the absence of proof that the parties signing the petition were not of the class and importance they claimed to be, they were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) their petition does not emanate from any public meeting of owners, &c., or of ratepayers or inhabitants; (3) they are represented by the corporation of Carmarthen; (4) no ground for a hearing exists according to practice; (5) the petition is insufficiently signed.

Hoskins, Parliamentary Agent (for petitioners): The petition is signed by 424 inhabitants and ratepayers, including the majority of consumers, by all but two of the largest consumers, and by one alderman and 12 members of the common council out of 18. The bill proposes to raise £10,000 additional capital and (clause 29) to repeal section 58 of the Act of 1870, which fixed the maximum price of gas at 4s. 6d., and (clause 30) to raise the maximum price to 6s. per 1,000 feet. There is no reason, as we allege, why the price should be raised, and what was really a contract between the company and the public altered. We also object to the powers sought by the company to increase their capital at the expense of the consumers; and we submit that it would be greatly to the advantage of the community if the corporation were to acquire and work the gas undertaking of the company. The corporation take no action by petitioning for or against the bill; and that being so, we are not represented by them. Carmarthen has a population of 10,000, and 424 petitioners are as many as could be expected to attend a public meeting. But a public meeting was, in fact, held, the mayor presiding, and the result was a unanimous resolution to oppose the bill. As the corporation do not petition, we as ratepayers and consumers have a right to be heard. (*Belfast Harbour Bill, Petition of John Rea*, 2 Cliff. & Steph. 75.) Here the bill is unopposed except by ratepayers and consumers. In the *Aberdare* case (2 Cliff. & Steph. 23) the inhabitants were heard.

Cooper, Parliamentary Agent (for promoters): There is nothing in the petition to justify the statement that it proceeds from 424 inhabitants, ratepayers, and consumers of gas. The heading refers to owners, occupiers, consumers, &c., but the body of the petition does not confirm the statement. As regards owners, lessees, and

occupiers, it was held in the *King's Lynn* case (2 Cliff. & Steph. 5) that they could not be heard.

Mr. RICKARDS: You say there is nothing in the petition to confirm the description in the heading, but they call themselves consumers in one part of the petition?

Cooper: One-half the petitioners are not gas consumers at all.

Mr. RICKARDS: We cannot take that fact from you.

Cooper: Even as consumers they are represented by the corporation; and as the corporation do not appear, it may be taken for granted that the consumers and inhabitants will not be prejudiced by the bill. In the *Aberdare* case, the ratepayers who petitioned represented a clear majority of actual ratepayers. Here, the rateable value of Carmarthen is £29,000, and the value represented by the petitioners is £5,000. The following cases are in my favour:—*King's Lynn* (2 Cliff. & Steph. 5); *Accrington* (1 Cliff. & Steph. 123); and *Liverpool Improvement*, lb. 48.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed*.

Agent for Bill, *Cooper*.

Agent for Petitioners, *Hoskins*.

CHELSEA WATER BILL.

Petition of HANNIBAL SPEER.

9th April, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM CARTER.)

Waterworks—Conduit Pipes—Highway—Interference with Drainage—Obstruction of Traffic—Cellars—Jurisdiction of Highway Board—Representation—Lord of the Manor—Landowner—Soil beneath Highway—Dedication of Surface—Easement—Injury to Sub-soil of Road—Landowner's right in respect of—Landowner's Notice under S. O.—Disused Highway—Reversion to Landowner.

A water company promoted a bill, authorising them to construct new works and lay down a conduit pipe beneath a certain high road. The land on either side of the road belonged to the petitioner, who was lord of the manor, but had not received the usual landowners' notice. The road was under the jurisdiction of the highway board, who had been served, but did not petition. The petitioner contended that he was entitled to a *locus standi* in respect of his interest in the soil beneath the road, of which he had not divested himself by the dedication of

the surface to the use of the public. For the promoters it was urged that, under the S. O., he was not entitled to a landowner's notice, and that for purposes of *locus standi* he had no such proprietary right in the road as would entitle him to be heard:

Held, that where a right of way is dedicated to the public, nothing passes except a licence to use the surface, and that though the S. O. make no provision for notice to the landowner in such a case, his interest is still such as entitles him to oppose a bill interfering with the soil below the surface. The Court, therefore, allowed the petitioner a landowner's *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) it is not alleged that his rights (if any) as lord of the manor of Weston will be prejudiced by the bill; (2) the fact, if true (which the promoters deny), that his estate will be depreciated by the proposed works does not entitle him to be heard, as no lands of his are liable to be taken compulsorily; (3) the only parties entitled to complain of interference with the soil underneath the roads are the surveyors of highways, or other authority in whom the roads are vested; (4) the water, in which he claims rights, is underground water in an undefined channel, and confers no legal rights upon him; (5) he is not affected by any provisions of the bill; (6) the petitioner does not show that he has any such interest as entitles him to be heard.

Little, Q.C. (for petitioner): The bill provides for the laying of a conduit pipe underneath certain roads in the manor of Weston. The petitioner is lord of the manor, and owner of the land on either side of two of the roads. The laying down of the conduit will obstruct traffic on the roads, and the conduit itself when laid down will interfere with the houses to be built along one of the roads by making the drainage difficult, preventing the construction of cellars, and in other ways.

Mr. RICKARDS: Are not the promoters bound to restore the surface of the roads after they have laid down their pipes?

Little: Yes; but if we were going to build on each side of the road there would be a difficulty in putting our sewer in, or making a subway after the company had laid a 4-foot pipe. The promoters are seeking to acquire compulsorily more than an easement; it is actual occupation.

Mr. RICKARDS: The road is a public road?

Little: But the highway board have nothing to do with the soil. The promoters are actually going to take away from us so much of our soil as will be displaced by their pipe, along two miles of our road. The case of the *St. Helen's Borough Improvement Bill*, *Petition of D. Willis*, is on all fours with this. (1 *Cliff. & Steph.* 64.)

Mr. RICKARDS: Has Mr. Speer received a landowner's notice?

Richards, Q.C. (for promoters): No; because we deal with a public highway.

Mr. RICKARDS: Do the highway board appear?

Richards: They do not petition against the bill.

Little: They have been settled with.

The CHAIRMAN: Would Mr. Speer be entitled to compensation under the bill for the exercise of this power by the promoters?

Richards: I think not.

Little: There is an interference with that which is the absolute property of the landowner. If the highway board were to dig and cart away the soil of the road, the owner could maintain trespass, and therefore he has a right to be heard, to object to the interference with the soil below the surface.

Richards (in reply): The petitioner having dedicated the road to the public, the highway board are the persons who represent him for Parliamentary purposes. As owner of land on each side of the road, he is not entitled to notice. The only case in which the right of the owner of the soil is recognised is where the land has been dedicated to the public with the reservation of the minerals. That was the case in the *St. Helen's Bill*.

Mr. RICKARDS: In that case the suggestion of minerals was to some extent hypothetical. It was not at any rate a fact in the case on which the Referees decided. Where a right of way is dedicated to the public, nothing passes from the owner of the land except a licence to use the surface.

Richards: What is his position in the eye of Parliament? He is no longer entitled to notice.

Mr. RICKARDS: It is quite true that the S. O. do not provide that he shall have notice; but on the other hand, is he not owner of the land to all intents and purposes, except as regards the rights of way over the surface? Suppose some one excavated under the road, and took away any soil, surely he might sustain an action for trespass. That shows the soil is in him. If a highway falls into disuse the surface reverts to the owner.

The CHAIRMAN: The *locus standi* of the Petitioner is *Allowed*.

Agent for Bill, *Rees*.

Agents for Petitioners, *Simson, Wakeford, & Simson*.

COMMERCIAL GAS BILL.

Petition of the CHARTERED GAS COMPANY.

27th May, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Practice—Select Committee—Bill referred to—Special order of House—Jurisdiction of Referees superseded.—S. O. 98 (Referees to decide upon petitions).

This bill had been referred, subsequently to the second reading, by special order of the House, to a Select Committee, together with a bill promoted by the Imperial Gas Company, and another promoted as a public bill by the Metropolitan board of works, and entitled "The Metropolitan Gas Companies' Regulation Bill." Against the Commercial Gas Company's Bill a petition had been presented and a *locus standi* was claimed by another company (the Chartered gas company) and the Referees were asked, in accordance with S. O. 68, to hear and determine upon this claim. It appeared, however, that, after the order of reference to a Select Committee, the House of Commons had made a further order "that all petitions against the bills be referred to the Committee, and all petitioners be heard by themselves, their counsel, or agents, upon their petitions, if they think fit, and counsel heard in favour of the bills against the said petitions:"

Held, that the jurisdiction of the Court in this case was superseded by the order of the House.

Pope, Q.C., for bill; agent, *Cooper*.

Venables, Q.C., for petitioners; agents, *Wyatt*, *Hoskins & Hooker*.

CHESHIRE LINES COMMITTEE BILL.

Petition of TRUSTEES OF THE DUKE OF BRIDGEWATER.

9th April, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Joint Committee—Railway—Canal—Transfer of—Stopping up Canal—Trustees under Will—Rent-charge secured on Canals—Security depreciated by Closing—Lands' Clauses Consolidation Act, 1845—Compensation to Mortgagees under—Injury to Traffic—On other Canals—Single Trader—Representation—Alteration in Status.

A joint committee, representing three railway companies, sought power in clause 5 of an omnibus bill to buy and stop up the Manchester and Salford junction canal, which connected the Rochdale canal at Manchester with the Irwell. The trustees

of the late Duke of Bridgewater opposed this provision in the bill, on the ground (1) that the sum of £5,000 was secured to them by way of rent-charge on the canal in question, together with other canals communicating therewith, and that the value of the security might be impaired by the closing of a portion of the canal system; and (2) that the petitioners would thereby be injured as traders and freighters upon these canals. It was answered, for the promoters, that (1) as to depreciation of security, the petitioners were mere mortgagees, and, under the Lands' Clauses Consolidation Act, 1845, ample provision was made for compensation to them in the event of any such depreciation; and (2) that they were merely single traders using the canal, and did not represent a class:

Held, that the petitioners were not entitled to appear either as mortgagees or as traders, and *locus standi* therefore disallowed.

The *locus standi* of the petitioners was objected to, because (1, 2, and 3) no lands, &c., of theirs are interfered with; (4) their petition states that they are entitled to rent-charges secured upon (among other canals) the Manchester and Salford canal, but these rent-charges are not affected, but are all secured to them under the Lands' Clauses Consolidation Act, 1845; (5) the proprietors of the Mersey and Irwell navigation and the Bridgewater navigation company, limited, are the owners of the Manchester and Salford junction canal, and have petitioned against the bill; and it is contrary to practice that persons having rent-charges or mortgages secured upon property should be heard separately from or against the mortgagors or owners of the property; (6 and 7) they have no interest entitling them to be heard according to practice.

Granville Somerset, Q.C. (for petitioners): By a deed, dated July 2, 1874, the Manchester and Salford junction canal, now proposed to be stopped up, and three other canals communicating with it, with divers lands, &c. (subject to a prior mortgage), together with all rights and privileges, were conveyed to a trustee, on our behalf and that of our co-trustees, for the purpose of securing certain yearly rent-charges amounting together to £5,015 10s. 5d., which are still due to us, and are charged upon the navigations and other property. We own and work extensive collieries and send large quantities of coal by these canals, and as traders we shall be injuriously affected if this canal is stopped up, while our security for the rent-charge will be prejudiced, as it partly depends not only upon the canal property itself but upon the traffic on the canals, which must suffer under the bill. The promoters object to our being heard because, they say, we are represented by the Bridgewater navigation company, to whom we have sold

our undertaking, but they do not properly represent our interest. The directors of the Bridgewater navigation company are railway people and not canal people. Four of the ten directors of the Cheshire lines committee are on the board of the Bridgewater navigation, and three others are on the board of the Midland or the Sheffield companies. It is said we are protected under the Lands' Clauses Consolidation Act, but the case is not the same as if we had a rent-charge merely upon land. Our rent-charge really depends upon a continuous flow of traffic on the canals, and it is impossible to say how much we may lose if this link is taken away. The following cases are in point:—*Bradford Canal Bill, Petition of Aire and Calder Navigation* (2 CH. & Steph. 178); *Severn Tunnel Bill, Petition of Gloucester and Berkeley Canal Company*, ib. 245; *Swansea Canal Transfer, Petition of Ystalyfera Company* (Smeth. 123.)

Pember, Q.C. (in reply): The petitioners are single traders, and as such are not entitled to be heard. In the *Swansea Canal* case, the facts were different. This canal is not going to be worked by a railway company, and with the exception of a little bit, will remain as it was before. In both the *Bradford Canal* and the *Severn Tunnel* cases, the petitioners were canal companies. The petitioners here are mere mortgagees of these canals, which belong to the Bridgewater navigation company, who are the mortgagors, and who are petitioning. It is contrary to practice that both mortgagors and mortgagees should appear. The petitioners say that the Bridgewater navigation company are in effect the same as the Cheshire lines committee, because four out of ten directors of the committee happen to be on the Bridgewater navigation. It is not shown that those four gentlemen are not *bona fide* interested in maintaining the interests of the Bridgewater navigation. Anyhow, the security of the petitioners will not be imperilled. The Lands' Clauses Consolidation Act, 1845, sections 115 and 116, provides for their case. In estimating what money is to be paid as consideration for the release of this bit of canal from the rent-charge, the damage done to the whole canal by taking away this bit must be assessed.

The CHAIRMAN: Do you say that the petitioners might be compensated under these clauses for the release of this part of the canal system?

Pember: Certainly. We buy the 300 yards proposed to be shut up, and no clause can do more for them than sections 115 and 116. There is nothing in the fact of their being mortgagees upon a canal, instead of being mortgagees upon agricultural land, to take them out of the ordinary category of mortgagees.

The CHAIRMAN: The *locus standi* of the Bridgewater Trustees is *Disallowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Wyatt & Co.

CORK HARBOUR BILL.

Petition of (1) OWNERS OF STEAM VESSELS TRADING TO AND FROM QUEENSTOWN; (2) THE TOWN COMMISSIONERS OF QUEENSTOWN AND OTHERS.

14th April, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Harbour Commissioners—Steamship Owners—Rival Harbours—Included within Port—Borrowing Powers—Additional Capital—New Quay—Status of Petitioners Altered—Provisional Order—Town Commissioners—Advantage Secured by Former Act Postponed—Representation—Demand for Increase in—Distinct Interests—Expenditure upon Works—Undue Preference to one Part of Harbour—Money Clauses.

The harbour commissioners of Cork promoted a bill enabling them to construct a deep-water quay at Cork, and to raise money for that purpose. A Provisional Order had been made by the Board of Trade in 1871, and confirmed by Parliament, which empowered the commissioners to raise £110,000 for the purpose of new works, subject to a condition that, of this sum, £10,000 should be laid out at Queenstown, which is situated within the limits of Cork harbour, and therefore within the corporation's jurisdiction. No time was limited for laying out the £10,000, and the commissioners had as yet expended no part of this sum, but had spent a large part of the residue at Cork, and the £120,000 to be raised under the bill would also be spent there. The bill was opposed (1) by steam shipowners at Queenstown, and (2) by the town commissioners and shipowners there, who urged that no further powers should be granted to the commissioners till they had spent the £10,000 at Queenstown; that the bill would enable the commissioners, owing to the omission from the Provisional Order of any limit of time, to postpone indefinitely the fulfilment of their obligation to Queenstown; and that the undue preference thus given to the interests of Cork would be an injury to Queenstown, and against the spirit of the Provisional Order, which contemplated that no more than £100,000 should be spent on Cork harbour until £10,000 had been spent in Queenstown. The promoters objected, generally, upon both petitions, that the exist-

ing statutory security for the expenditure at Queenstown would remain unaffected by the bill; and as to the town commissioners, that they were directly represented upon the harbour board, who were not bound to lay out any money within their limits, and that the bill contained no provision injuriously affecting them:

Held, that petitioners (1) were entitled to a *locus standi*, limited to the money clauses of the bill and corresponding portions of the preamble; that (2) the town commissioners and others had no right to be heard against the bill.

The *locus standi* of owners of steam vessels, &c., was objected to, because (1) their whole petition is founded upon the defaults or misfeasance of the Cork harbour commissioners with respect to Queenstown, and they contend that no further powers should be granted to the promoters until they have spent a sum of £10,000 upon Queenstown; (2) the allegations of their petitions are untrue, and do not confer a right to be heard; (3) the object of the bill is the construction of a deep-water quay in Cork harbour, the constitution of the harbour commissioners is not touched, the application of the £10,000 to Queenstown is not interfered with, nor does the bill affect any rights, powers, or privileges now attached to the shipping which resorts to Queenstown.

The *locus standi* of the town commissioners of Queenstown and others was objected to, because (1, 2, and 3) the town commissioners have the usual control of streets, &c., in Queenstown, but are in no way a harbour authority, and do not allege that any property, rights, privileges, or revenue of theirs are affected by the bill; (4 and 5) as to their complaint that Queenstown should be better represented in the harbour board, and that harbour dues collected at Queenstown and a proportion of the money borrowed should be expended there, they have no right to be heard on these questions; and the remainder of the petitioners do not represent any class, and are not entitled to a hearing.

Round (for steamship owners): We represent companies and firms who own an immense fleet of Transatlantic and other steamers using Queenstown harbour. By a Provisional Order, called "The Cork Harbour Order, 1871," the Cork harbour commissioners, who promote this bill, were authorised to borrow the sum of £110,000, for the purpose of discharging an existing debt of £46,000, and applying the remainder to the improvement of Cork harbour, with the exception of £10,000 at the least, which they were to apply to "further improving that portion of the harbour and port which lies in the immediate vicinity of Queenstown." What the promoters propose to do by the bill, is to raise a further sum of £120,000 for making a new deep-water quay at Cork. The £110,000, which they were authorised to borrow under the Act

of 1871, would, after discharging existing obligations, leave a round sum of £70,000 in hand, out of which they were bound to apply £10,000 for our benefit. Of this £70,000 they have only at present raised £40,000, none of which has been spent upon Queenstown; but still, as matters now stand, they must, when they have spent £60,000 on Cork harbour, spend £10,000 for our benefit, whereas, if the bill passes, they may lump the sum remaining to be raised of that £70,000 with the additional capital of £120,000, and postpone spending the £10,000 on Queenstown, till they have exhausted the whole of the aggregate sums in improving Cork harbour. When they got their Provisional Order, we never anticipated this delay in the improvement of Queenstown, and we are so badly represented on the Cork harbour commission—Queenstown only sending one member out of 35—that we cannot hope for redress from this quarter. We claim to be heard, in order that the board may not be allowed to raise further capital, which will practically allow them to postpone indefinitely any expenditure at Queenstown.

Littler, Q.C. (for the town commissioners and shipowners): We also complain that the powers conferred upon the harbour commissioners in 1871 have been exercised exclusively for the benefit of Cork, and that nothing has been done in Queenstown with any of the capital authorised to be raised by that bill. The constitution of the commissioners is unjust. Queenstown contributes very largely to the annual rates, which formed the security for the sum authorised to be raised by the promoters in 1871, and which will also form the security for the additional sum to be raised by this bill. Yet we only send one member out of 35 to the harbour board, so that our interests there are most inadequately represented. The bill contains no security that any portion of the new loan shall be devoted to the improvement of Queenstown, and we say that it should contain such provisions, and should give us a proper representation. A fair proportion of the rates we pay should be expended for the improvement of our harbour. The chairman of the town commissioners of Queenstown is *ex officio* chairman of the harbour board.

Mr. RICKARDS: Then, in fact, he is one of the promoters of the bill?

Littler: But we have an entirely different interest from that of the promoters and cannot be excluded on the ground of representation, because we have one representative out of 35; otherwise we can never complain that we are entitled to more representation. We say that we are entitled to be heard against the exclusive appropriation to Cork of rates levied in Queenstown, and that as town commissioners we represent the interests of the inhabitants of Queenstown.

Pope, Q.C. (for promoters): As to petition (1), the intention of the bill is to leave absolutely untouched the right of Queenstown to this £10,000, and we not only reserve its rights, but by clause 20 we continue to earmark £10,000 of our fund in favour of Queenstown. Supposing the bill were rejected, Queenstown would not get its £10,000 any the sooner. There is nothing in the bill to limit its right to the £10,000, or to

increase its rateability. The raising and expenditure of this £10,000 may be indefinitely postponed either with or without the bill. We can stop short after raising £60,000 under the Provisional Order.

Mr. RICKARDS: The power to raise the £70,000 under the Provisional Order is saddled with the obligation to appropriate £10,000 to Queenstown. Supposing the Cork harbour commissioners have no mind to benefit Queenstown, but wish to benefit their own harbour, what is to hinder them from abstaining from exercising, further than they have exercised, their powers under the Provisional Order of 1871, and, if they get this bill, proceeding to exercise their powers under this bill, leaving the powers under the Provisional Order of 1871 dormant? The question is whether the position of the petitioners is altered for the worse. If this bill passes, the commissioners might defer spending £10,000 upon Queenstown until they had spent £180,000 on their own harbour.

Pope: At any rate the petitioners are only entitled to be heard against the raising of additional capital. As to the town commissioners, we do nothing which affects them. We do not propose to raise any rates in their jurisdiction, nor were we ever bound to spend any money upon any works in their jurisdiction. Queenstown harbour is a part of the harbour of Cork, with which the town commissioners of Queenstown and the other petitioners have nothing to do. [He was then stopped.]

The CHAIRMAN: The *locus standi* of Steamship Owners and Others is Allowed against Clauses 20, 21, and 24 of the bill (money clauses), and so much of the preamble as relates thereto. The *locus standi* of the Town Commissioners of Queenstown and Others is Disallowed.

Agents for Bill, Dyson & Co.

Agents for Steamship Owners, Milne, Riddle, & Mellor.

Agent for Town Commissioners and Others, Batten.

DUBLIN, WICKLOW, AND WEXFORD RAILWAY BILL.

Petition of CHAIRMAN AND COMMISSIONERS OF THE TOWNSHIP OF WICKLOW, AND OF THE INHABITANTS AND TRADERS OF THE SAID TOWNSHIP OR BOROUGH AND ITS NEIGHBOURHOOD.

7th June, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice — Town Commissioners — Inhabitants and Traders — Signature — By Individual Commissioners — No Resolution adopting Petition before Deposit — Subsequent Ratification — Decision of Court — Reasons assigned — Objections not Traversing Petition — Evidence — Railway — "Gazette" Notice — Effect of, taken with Bill — Additional Lands — New Station — Abandon-

ment of Existing Station — Injury to Trade by — Depreciation of Property by — Additional Lands — Agreement — Implied Obligation — Breach of Faith — No Injury disclosed by Bill.

This was a petition by the town commissioners and inhabitants and traders of Wicklow against a bill, which, as they alleged, would enable the promoters to abandon the existing station there, and substitute a less convenient one. The grounds relied on by the petitioners were: (1) injury to the town and trade; (2) depreciation in the value of corporate property belonging to the commissioners by the closing of the present station; and (3) alleged breach of an agreement, whereby the commissioners in 1853 conveyed between four and five acres of land (Irish measurement) to the railway company for the purposes of their railway and station, on the understanding, implied or expressed, that the land would continue to be permanently used for railway purposes. Formal objections were taken to the *locus standi* of the town commissioners, because the petition was not sanctioned by a duly constituted meeting of the body; and, as regarded the traders and others who joined in the petition, because the number petitioning was insufficient. Nothing was said in the bill about abandoning the existing station at Wicklow. The petitioners, however, contended that this object was apparent on the face of the bill, if read together with the *Gazette* notice and the deposited plans. Evidence was produced to show that the commissioners had granted the land to the railway company for a small consideration, in view of the advantages which might be derived by the town and traders; but there was no proof of any agreement:

Held, however, upon another ground, that even assuming the petition to be, as it purported, that of the town commissioners, and that a sufficient number of traders and inhabitants had signed it, there was nothing appearing on the face of the bill of which the petitioners had a right to complain, and their *locus standi* was disallowed.

The *locus standi* of the petitioners was objected to, because (1) the petition is not that of the chairman and commissioners of Wicklow as it purports to be, and was not sanctioned at any

ordinary or special meeting of the commissioners held under the statutes 9 Geo. IV., cap. 82, and 3 and 4 Vict., cap. 108, which regulate their proceedings. No meeting was called, as was necessary, in conformity with the former of these Acts; (2) the petition, so far as it purports to be that of the chairman and commissioners, is insufficient, because (a) it is only signed by 10 out of 21 of the commissioners, and is not authenticated by the signature of their clerk; (b) it does not allege that the township or inhabitants generally of Wicklow will be injuriously affected by it; (c) nor that the petitioners or any of them are the local representatives of the township or borough of Wicklow. So far as it is the petition of inhabitants and traders, it is insufficient, because (d) it does not allege that any public meeting of the inhabitants of the township was held at which any resolution to adopt the petition was passed; (e) in point of fact the petition emanates from a meeting called by the chairman of the commissioners to consider a proposal of the Parliamentary Agents, in compliance with the requisition of six persons, on 20th May, 1875; (3) none of the petitioners' lands, &c., will be compulsorily taken, (4) nor do the petitioners show any such interference with their rights or interest as entitles them to be heard; (5) it is not proposed by the bill to shut up the station at Wicklow, but merely to provide for the beneficial working of the promoters' railway, and by the erection of their present station the promoters have fulfilled all obligations of the nature referred to in the petition; (6) the possible injury apprehended is too vague and remote; (7) and their petition discloses no ground for a hearing according to practice.

Clifford (for petitioners): The Parliamentary notice refers to an intended application for an Act to enable the company, amongst other things, to make and maintain a certain road at Wicklow, and to acquire lands compulsorily at the termination of the road "for the purpose of making a passenger station." This object is less clearly stated in the bill, the preamble of which recites that it is expedient to empower the company "to acquire additional lands for the extension of certain of their stations and other premises for the purpose of their undertaking." But the deposited plans show that the lands to be taken compulsorily are those indicated in the Parliamentary notice as being for the purpose of a passenger station. It is clear, therefore, that the promoters intend to make a new passenger station upon the site they will thus acquire. If so, it will be in the power of the company to close the existing station, or to bring the greater part of their traffic to the new station. Such a change would be to the injury of the town and trade of Wicklow, which we represent, and would be most inconvenient to the inhabitants using the railway. Upon this general ground we should have a right to be heard against a change of station, as in the *Norwich* case. (*Great Eastern Railway Bill*, 1 Cliff. & Steph. 70.) But we also allege a special ground for appearing. Before the construction of this line the commissioners owned the land on which a portion of the company's existing passenger station and railway now stand. It was valuable

building land adjoining the sea-beach, and convenient of access; and the commissioners caused maps and plans to be made with a view to build, and so increase the value of the corporation property. If such buildings had been erected, the value of the corporation property would have been largely increased; but instead of carrying out this improvement, we were induced to grant a portion of our property to the railway company for a small sum (£104), with a view to the general convenience which would result to the town from the existence of a station at this point. The land so conveyed to the company was 4 acres, 27 perches (Irish plantation measure); the price was almost nominal. We parted with the land upon the understanding that it would be permanently used for the purposes of a passenger station. Upon adjacent portions of our property still in our possession we built a bridge to accommodate the traffic, and houses and hotels were also built there, owing to the proximity of the station. Having got our land, and induced people to build, upon the faith of the continued existence of the passenger station at this point, the company now turn round and propose to remove the station to a considerable distance outside the town. The result will be not only inconvenience to the inhabitants and an injury to the trade of Wicklow, but a depreciation in the value of our property.

The CHAIRMAN: Was there any written agreement between the commissioners and the railway company?

Clifford: No written agreement, but an understanding shown upon the minutes of the commissioners' proceedings, as the result of negotiations with the company.

Cripps, Q.C. (for promoters): Admitting that to be so, we are not bound.

Mr. RICKARDS: It only shows the understanding of the commissioners.

Clifford: It shows that we parted with the land upon the faith of representations made to us in negotiating with the company that the passenger station would be continued there.

The CHAIRMAN: From what facts do you arrive at the conclusion that the passenger station is to be removed?

Clifford: From the *Gazette* notice, set forth in the petition, and the bill, which, read together, show the promoters' intentions.

The CHAIRMAN: They may be proposing merely an additional station?

Mr. RICKARDS: It does not appear from the bill and deposited plans that they are going to abandon the present station.

Cripps: No; nor is there any such intention.

Clifford: If they take power to make a new station, it is clear that they mean to divert some traffic from the old station, and whether the traffic so diverted be great or small, we are entitled to appear: it is for the Committee on the bill to consider the quantum of injury.

Mr. RICKARDS: Do you contend that an additional passenger station would be an injury to the town of Wicklow?

Clifford: Yes; for we say, first, that it would depreciate the value of the commissioners' property near the existing station; and, secondly, that it would be an injury to the inhabitants and

traders to be obliged to go to and fro by a long and inconvenient route, instead of having a station close at hand as it now is.

The CHAIRMAN: But the promoters deny that they are going to abandon the station.

Clifford: On this point we must look at the bill and the *Gazette* notice; a mere statement of intentions cannot be received. Assume for a moment that the company do not now propose to abandon the existing station, and see the position in which we shall be placed if hereafter they come to Parliament proposing to abandon it. We shall then be told:—"Your time to object was when the company proposed to make a second station. Why should the company be compelled to keep open two stations where experience shows that one will suffice?"

The CHAIRMAN: For all that appears in the bill it is a reduplication of stations. We cannot assume that the company will abandon the existing station.

Clifford: You must assume that the company would not be at the expense of making a second station unless they proposed to make some considerable use of it; and if the second station is used at all, our trade will be injured and our property depreciated in value.

The CHAIRMAN: There are many towns in which two stations are used by the same company.

Mr. RICKARDS: It is the closing of the present station which is the gist of your case.

Clifford: Not necessarily the closing, because short of actually closing it the company might divert nearly the whole of the traffic from the old station to the new one, or use the old station for goods and the new one for passengers. In objection (5), the promoters say that by making the railway into the town of Wicklow, and by erecting the present station, they have fulfilled "any obligations of the nature referred to in the petition." Thus they really admit the existence of such obligations. They might have traversed our allegation that such obligations existed, but they only say that they have carried out the obligations, which we deny. This is a virtual admission of our *locus standi*. Then the promoters object that so far as our petition purports to be a petition of inhabitants and traders, it is insufficient, no public meeting of inhabitants being alleged. But the Referees have never held that it is necessary to hold a public meeting in order to give validity to a petition; and if our petition is defective through the want of an allegation that such a meeting was held, the defect is cured by the objections, which state that the petition emanated from a meeting called upon "the requisition of six persons," to consider the question. The fact of the public meeting thus appears upon the pleadings.

Cripps: After serving the petitioners with our notice of objections, a meeting of the commissioners was called to ratify what had been done.

Clifford: One question for the Referees will be whether, so far as the petitioning commissioners are concerned, a petition already lodged acquires validity by subsequent ratification.

Mr. RICKARDS: Can you show that the petition was adopted by the commissioners at any meeting before it was presented?

Clifford: Not adopted, but considered. The commissioners had previously held repeated meetings on the subject, and there had been frequent negotiations between them and the railway company.

Mr. RICKARDS: Was there any resolution to petition?

Clifford: Not before the subsequent ratification. The plain truth no doubt is that the commissioners, who are not a wealthy body, put off petitioning till the last moment in the hope of a settlement and to avoid expense. The subject itself was repeatedly discussed long before the bill was deposited. The case of the *Glasgow Court Houses Bill* (1 Cliff. & Steph. 160), shows that a petition may be ratified after it is lodged. Even looking at the petition as one of inhabitants and traders, apart from the representative body, there is a substantial representation of the town and trade, and a smaller proportion of petitioning inhabitants has been heard. (*Great Western, &c., Railway Companies Bill*, 1 Cliff. & Steph. 132; *South Eastern and Brighton Railway Company's Bill*, *ib.* 149; *Sligo Borough Improvement Bill*, *ib.* 56.)

The CHAIRMAN: Can you establish by evidence that this piece of land was conveyed to the railway company by the corporation with an express or implied agreement that a railway station should be erected there, and that it should be maintained for ever as the single and exclusive station for Wicklow? The existence of this implied condition is a material part of your case, and it is for you to prove it.

Clifford: I submit that this would be rather matter of proof in Committee.

Mr. RICKARDS: If you ask for a *locus standi* on the ground of the violation of an agreement, you must give *prima facie* evidence of the agreement.

Clifford: It is only one of the grounds on which we ask for a *locus standi*.

Mr. RICKARDS: If you rely upon that ground you must give us *prima facie* evidence in support of it.

Clifford: Such evidence would be oral as well as documentary, and we ought to have had some prior intimation that it would be needed, instead of which the promoters do not traverse the fact that such an obligation existed on their part.

The CHAIRMAN: They say they have fulfilled "any obligations of the nature referred to in the petition."

Clifford: That objection admits the existence of an obligation, and merely says it has been discharged, which will be a fair issue to raise, but in Committee, not upon *locus standi*. The promoters might have said, "There was never any such obligation;" but they do not say so.

Mr. RICKARDS: They say, in effect, "There is no obligation upon us to maintain the station for ever. Whatever obligation there was we have fulfilled." Your allegation that the bill involves a breach of faith is one upon which we must have some evidence in order to justify us in giving you a *locus standi* upon that ground.

Clifford: We can hardly be expected to be prepared with evidence to support an issue not raised on the other side. We can produce the bare minutes of proceedings of the commis-

sioners, but these would be only one portion of our case if we went before the Committee; we should supplement it by oral evidence of the understanding alleged in our petition.

Mr. RICKARDS: It is sufficient if you give *prima facie* evidence here.

Mr. John Nolan (one of the commissioners signing the petition) produced certified copies of the minutes, including a resolution of the body, passed August 5, 1852—"That we agree to accept Mr. Muggeridge's proposal for the land on the Murrough for the purpose of a railway from Dublin to Wicklow, amounting to 4 acres 27 perches, and according to the plan of the railway, provided the land be used for the purpose of a railway only; and we hereby authorise our chairman to give possession in the usual way when the plan of railway is produced." Then followed a resolution, dated March 7, 1853, that the deed of conveyance of the land before referred to should be duly executed, the company paying the sum of £104 3s. 9d.

Clifford: The proviso in the first resolution, that the land "should be used for the purpose of a railway only," shows what the commissioners understood to be the bargain they had entered into.

Cripps: We cannot be bound by anything to which we were not parties. There is a deed between us and the commissioners.

The CHAIRMAN: Is the deed here?

Cripps: No; but it only contains the usual covenants.

The CHAIRMAN (after deliberation): Assuming that the petition is the petition of the commissioners, and that a sufficient number of inhabitants and traders have signed the petition, we still see nothing on the face of the bill that would afford a *locus standi* to the petitioners, and therefore we must disallow their *locus standi*.

Cripps: Obviously, it is not the petition of the commissioners.

Mr. RICKARDS: We do not decide whether it is or is not.

Locus standi Disallowed.

Agents for Bill, Holmes & Co.

Agents for Petitioners, Cruse and Sandes.

EAST LONDON RAILWAY BILL.

Petition of GREAT EASTERN RAILWAY COMPANY.

15th April, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Extension of Time—Applicable only to Portion of Authorised Lines—Abandonment of Remainder—Junction Lines—Breach of Faith—Lapse of Powers—Obligation under Former Act—Compulsory Purchase of Lands—Protection given by Former Act—Interference with

Street—Obstruction to Traffic—Public Thoroughfare—Local Authority—Representation—Distinct Interest—Change in Status.

The bill was one to extend the time for completing a certain portion of an authorised branch line. The Great Eastern company alleged that the promoters were bound by their Acts to construct other branches, the time for executing which was also about to expire, though with respect to these the bill authorised no extension, and that the result would be the abandonment of these branches, to the injury of the petitioners, who were interested in their construction, owing to their junction with the Great Eastern system. The bill also proposed to revive compulsory powers over certain public thoroughfares; and the petitioners, who did not claim any property in them, alleged that the stopping up of the streets would seriously obstruct the access to their station, and interfere with the traffic. The promoters denied that they were under any legal or Parliamentary obligation towards the Great Eastern company to complete junctions with that company's line, and contended that the petitioners were not entitled to oppose the bill merely on the ground that it did not extend the time for completing authorised branches, which the promoters did not now need, and were not competent to make. As to the streets proposed to be taken, they denied that the petitioners had any interest which would have entitled them to oppose the original power to take, and there had since been no alteration in the circumstances:

Held, that the *locus standi* of the petitioners must be disallowed.

The *locus standi* of the Great Eastern company was objected to, because (1) they cannot be heard on the grounds stated in their petition, that the bill does not contain certain provisions which they allege it ought to contain; (2) the omission from clause 4 of the bill of the portion of the railway, No. 1, and of the Great Eastern up junction and Brick Lane junction is not such an abandonment as to entitle them to be heard; (3) no such alteration in the agreements between the promoters and petitioners is contemplated as entitles them to be heard; (4) no obligation to construct the said portion of railway and junctions exists, nor, if it existed, would it be affected by the bill; (5) the petitioners have no interest in the street in Bethnal Green, numbered 113 in the plans, and if they had, that street is

excluded from the operation of the bill; (6) no grounds exist for a hearing according to practice.

Littler, Q.C. (for petitioners): The East London company amongst other things ask for an extension of time to complete a portion of a railway, No. 1, authorised by their Act of 1865. In 1866 they obtained powers to make two junctions with our railway called the "Great Eastern up junction" and the "Brick Lane junction," which were to communicate with our railway at a point on railway No. 1. This point is not upon the portion for the completion of which they seek an extension of time, but upon a part which they practically propose to abandon. In 1870 they got an Act to extend the time for the completion of railway No. 1, together with these two junctions, till the 20th of next June. Those powers, therefore, are just about to expire, and now the promoters wish to extend the time for making part only of railway, No. 1, and propose to let the powers for making the other, and to us the important, part of railway, No. 1, and these two junctions, lapse altogether. We are deeply interested in the construction of these lines, and say they ought to be included in the bill. In 1871, the company desired to abandon these two junctions, and got an Act which provided that if in the then two next ensuing sessions they obtained powers to construct a new and convenient junction in the place of these two, they might then be abandoned. This new junction was to be made by agreement with us, or, failing agreement, by arbitration. But the promoters got, or applied for a bill, for this new junction, and now they propose to abandon the two junctions sanctioned by the Act of 1866, together with the portion of railway, No. 1, authorised in 1865. This is a bill to extend the time for a portion of a line, and to drop the rest. There is no penalty which we can enforce for this practical abandonment, and, therefore, we claim to be heard before a Committee to prevent it.

Mr. RICKARDS: Is your only objection the non-extension of time with respect to those junctions?

Littler: No; we also object to the extension of time in respect of the promoters' powers of compulsory purchase over certain lands, including street numbered 113 on the plan. We should be seriously incommoded and obstructed in carrying on our business if the street were taken or interfered with as proposed.

Ledgerd (for promoters): As regards the extension of powers to purchase, the petitioners are amply protected by former Acts, and no change whatever is proposed to be made in their position by the bill. We were authorised, in the first instance, by an Act of 1865, to purchase street 113, and this bill only seeks to extend the time for that purchase, not the method of dealing with it. This method is prescribed by an Act of 1874, which remains in force. Moreover, the street in question is a public street, under the management of a local authority. The petitioners are entirely wrong when they assert that the Act of 1871 imposed any obligation upon us to come to Parliament in the next or following session for the substituted junction to which that Act relates. The Act merely says:—If

the engineers to the two companies shall agree before the next or the following session upon some substituted junction which they think will be preferable to the two junctions authorised by the Act of 1866, then the substituted junction shall be carried out if Parliament sees no objection. We therefore elected to let things remain in *status quo*, which we had a perfect right to do.

Locus standi *Disall* *and*

Agents for Bill, *Sherrin* & Co.

Agent for Petitioners, *Sherrin*.

GLASGOW CITY STREET IMPROVEMENT BILL.

Petition of (1) **HENRY LECK.**

21st April, 1875.—(Before **Mr. BRISTOWE, M.P.**, Chairman; **Mr. PENBERTON, M.P.**; **Sir JOHN DUCKWORTH**; and **Mr. RICHARDS.**)

Agreement—Confirmation—Corporate Bodies—Ultra vires—Stopping up Street—Owner—Limits of Deviation—Property Beyond—Obstruction of Access—Bill Pendente lite—Rate-payers, Inhabitants, &c.—Distinct Interest.

The bill was promoted jointly by the corporation and board of police of Glasgow, and its objects were to make a new street and confirm an agreement relative thereto between these two bodies and the Union Bank of Scotland. The agreement authorised the Union bank to extend their head office over the site of East Virginia Place, at present a thoroughfare for foot passengers, and in lieu of this thoroughfare a new street was to be formed over certain property belonging to the bank. The petitioner was the owner of valuable property adjacent to East Virginia Place, but beyond the limits of deviation, and alleged that this property would be much deteriorated in value, if deprived of its present access. He stated also that he had instituted proceedings against the promoters in the Court of Session in respect of their present undertaking, that the case was still *sub judice*, and that the bill was an attempt to supersede the jurisdiction of the law courts. In reply the promoters contended that they represented the petitioner as a ratepayer, that he had no interest as a landowner entitling him to a hearing, and with regard to his suit in the Court of Session, it was stated

that, since the deposit of the petition, the Lord Ordinary had decided against the petitioner:

Held, that he was not entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1 and 2) no lands, &c., rights, or interest of his are interfered with; (3) the fact of his being an owner (even if true) of property beyond the limits of deviation does not entitle him to be heard; (4) all matters of police, as well as the management of all the public streets and thoroughfares, are vested in the joint promoters, who represent both inhabitants and ratepayers, and in neither of these capacities has the petitioner a right to appear; (5) the legal proceedings by the petitioner give him no right to be heard against the bill; (6) his suit in the Dean of Guild Court has been abandoned, and the suit in the Court of Session was commenced with the view of giving him a colourable title to oppose the bill; (7 and 8) his interests are not distinct from other ratepayers, &c., and he cannot oppose a bill promoted by the corporation and board of police; (9) he has no interest entitling him to be heard.

Pope, Q.C. (for petitioner): The sole object of the bill is to sanction an agreement, by which the promoters convey to the Union Bank of Scotland the site of East Virginia Place, for the purpose of enlarging the bank premises. This enlargement will close up the street, and in return the bank are to make a new street. East Virginia Place forms an important access to our premises, which will be much deteriorated in value if it is allowed to be closed. The stopping up of a thoroughfare unquestionably since the decision in *Chamberlain v. West End and Crystal Palace Railway Company*,* and other cases of that kind, is a damage, which may under certain circumstances be said to be a damage consequential upon the execution of the works. The petitioner, therefore, is interested personally in the maintenance of this public way, as an owner of property, the access to which will be interfered with. Then, you have here the special circumstance that the bill is promoted by the local representative bodies and will be unopposed by any ratepayer unless Mr. Leck or persons in his position are admitted; and the bill will also give statutory authority, which does not exist at present, to an agreement, which materially alters his status as a litigant in the public courts.

Pember, Q.C. (for promoters): This is a bill promoted in the public interest, and the Lord Ordinary in his judgment on this point, March 10, 1875, finds it proved that the proposed change and diversion will be for the public advantage, and the advantage of all the properties in Virginia Street and the neighbourhood. We thought that we could carry out these improvements by getting an order from the Dean of Guild, but when we found that this was not possible, we went for our bill. As soon as Mr.

Leck saw that we were going for our bill, he brought his action before the Lord Ordinary, contending that the agreement which the bill was going to sanction and the work the subject of the agreement were *ultra vires*, and he endeavoured to get a decision to that effect from the Lord Ordinary. He has failed; the Lord Ordinary giving a decree completely against him. He is not entitled to appear in any capacity whatever.

Locus standi Disallowed.

Agents for Petitioners, *Grahames & Wardlaw.*

Petition of (2) TRADES HOUSE, AND TRADES INCORPORATIONS OF GLASGOW.

Street Improvement—Interference with Property—Owners—Footpaths—Limits of Deviation—Road—Frontagers—Right of, to Solum of Roadway—Deterioration in Value of Property—Local Authorities—Ratepayers—Representation—Distinct Interest—Evidence.

Against a proposed street improvement in Glasgow, petitioners sought to be heard as proprietors of a large building, called the Trades' Hall, and they alleged that under the bill a wall would be built on the west boundary of their property which would thereby be injured in value:

Held, that, the bill being promoted by the corporation and board of police of Glasgow, the petitioners could not claim to be heard on this ground, their interest not being distinguishable from that of the general body of ratepayers and owners, who were represented by the promoters in their corporate capacities:

As owners of the Trades' Hall, the petitioners also claimed the property of the solum halfway across the thoroughfare in front of their premises, the footway of this thoroughfare being within the limits of deviation, and liable to be interfered with under the bill. Their rights of ownership being disputed, evidence was called on their behalf to show that in Glasgow the soil to the middle of the roadway fronting each house was vested in the house owner, subject to public user and to the jurisdiction of the road authority over the surface:

Held, that the petitioners had given *prima facie* evidence of an interest in the land which

* B. & S., 605.

might be affected by the proposed alteration, and were, therefore, entitled to a land-owners' *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands, &c., rights, or interests of theirs are affected; (3) the only interest they can have in the roads or streets specified in their petition is that common to them with the other inhabitants and ratepayers of Glasgow, and they are therefore represented by the promoters of the bill in their corporate capacities; (4) they have not, nor do they allege that they have, the control or management of the streets which may be interfered with under the bill, nor have they any interest in them other than that shared by other inhabitants; (5) their alleged property in the soil of the streets, the use of which is common to all the ratepayers and the public, confers no right of *locus standi*; (6 and 7) they have no distinct interest entitling them to be heard; and (8) their petition shows no such interest.

Mundell, Q.C. (for petitioners): We claim to be heard, first, because our rights to the use of the street, which will be interfered with, will be destroyed by the bill, and our property in the neighbourhood deteriorated in value; and, secondly, because our property will be actually taken.

The CHAIRMAN: You had better confine yourself to the latter question of ownership, as we are not inclined to admit the petitioners on the former ground against the corporate bodies who promote the bill.

Mundell: We are proprietors of the large building situated to the east of the proposed alteration, known as the Trades' Hall Building, and our property extends about 24 feet along the line of the proposed alterations. Under the agreement, which this bill is to sanction, the Union Bank will retain one foot six inches of the ground to the east of the proposed new street, all along the west boundary of the property belonging to us. On this line they propose to erect a wall, and what is really material to us as owners, is that the limits of deviation include the footpath in front of our Trades House, the soil of which vests in us.

Pember, Q.C. (for promoters): We deny that the petitioners have any rights in the pavement. They have only the ordinary user of the pavement. It is true that the maintenance of the foot pavement is thrown on the frontagers, but that maintenance does not give them a right to the soil.

Mundell: But the right to the soil exists at the same time with it. All proprietors of houses fronting on a street in Glasgow own the soil in front of their houses as far as the middle of the road, and have to pay for it by the square yard, when they purchase the site of their houses.

[Evidence was here called, which bore out this statement of counsel.]

The CHAIRMAN: We are of opinion that a *prima facie* case of ownership has been made out, and the Trades' House and Trades' Incor-

poration of Glasgow are therefore entitled to a *locus standi* as Owners.

Agents for petitioners, *Grahames & Wardlaw*.

Agents for bill, *Simson, Wakeford, & Simson*.

GREAT EASTERN RAILWAY BILL.

Petition of (1) CORPORATION OF CAMBRIDGE.

8th March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Works, Construction of—Highways—Level Crossing—Danger to Public—Municipal Corporation—Insufficient Allegations as Land-owners—Surface of Roads—Owners of Soil under Roads—Representation—Ratepayers—Repeal of former Legislation—Annual Payment—Exemption—Improvement Commissioners—Proper Parties to Petition—Borough Rates—Improvement Rates—Carriage of Parcels—Non-traders.

An omnibus bill, promoted by a railway company, was opposed by the corporation of C., who claimed to be heard (1) against so much of the bill as authorised the laying of additional rails upon an existing level crossing, thereby interfering with the surface of certain roads as to which it was admitted that the soil beneath the surface belonged to the corporation, though the control and management of the roads themselves were vested in improvement commissioners; (2) against a proposed exemption of the railway company from the yearly payment to the improvement commissioners of a sum of £1,000; and (3) against a provision in the bill relating to the carriage of small parcels. In answer to objections (1) and (2) the promoters contended that the corporation were represented by the improvement commissioners who had petitioned, and whose *locus standi* was conceded; and as to objection (3), that the proper parties to appear were the traders of C., who had also petitioned and would be heard. The corporation, while complaining in their petition of inconvenience and danger to the public using the roads through the additional rails proposed to be laid upon the level crossing, did not specially allege that they were owners of the sub-soil of the roads, or object as land-owners to the proposed interference:

Held, that the corporation were not entitled to a *locus standi* on any one of the grounds taken in their petition.

The *locus standi* of the petitioners was objected to, because (1) they have not the management or control of the roads affected by the works to be constructed under the bill, such management being vested in the Cambridge improvement commissioners, who also petition; (2) they object to a provision relating to the carriage of parcels, but they are not traders, several of whom have petitioned; (3) they also object to the repeal of a provision in the Cambridge Improvement Act, 1846, by which the Great Eastern were to pay £1,000 annually to the Cambridge improvement commissioners, but the said commissioners are the only parties who can properly petition against this repeal, and they do so in their petition; (4) they have no interests of any kind entitling them to be heard against the bill according to practice.

Clerk, Q.C. (for petitioners): The road alterations authorised by the bill will be dangerous and inconvenient to the public. The corporation is seized in fee of the soil of the highways. (*Brett & Beales* 10, B. & C. 508.)

Mr. RICKARDS: How does the bill affect the road?

Littler, Q.C. (for promoters): In no way except by laying down two additional lines over the level crossing.

Clerk: We can prove that we are owners of the soil.

Littler: I will not put you to proof of that.

Mr. RICKARDS: Is there any instance in which a landowner, *quod* owner of the soil, has been allowed to object to a bill dealing with the surface of the road?

Clerk: I remember a case in Glasgow where the roads were to be interfered with underneath the surface, and where the corporation were owners of the soil. No question was raised of their right to be heard. There is nothing in this bill to limit interference to the surface; the railway company may go beneath the surface. As to the carriage of parcels, I will not press that point. The £1,000 a year was imposed upon the company in 1846, and if it had not been so imposed, the ratepayers of Cambridge must have paid it. If the obligation to pay this sum were repealed, there would be *pro tanto* an obligation falling upon the ratepayers whom we represent.

Mr. RICKARDS: Here is a sum payable to the improvement commissioners. It is proposed to stop that payment to them. Surely they are the parties to object?

Clerk: No doubt in the first instance.

Mr. RICKARDS: First and last, too; they represent the ratepayers as regards that money.

Clerk: As they can raise no more money the bill really diminishes the fund which the improvement commissioners will have to expend for purposes under their control. Thus the ratepayers must suffer through want of proper expenditure.

Littler, Q.C. (in reply): The improvement commissioners who make the proposed exemption a point in their petition, do not say that they have arrived at their maximum limit of taxation, and we dispute the statement.

The CHAIRMAN: You need not labour that point further.

Littler: With regard to the petitioners' claim as owners of the soil, a landowner must say, either in words or by implication, that he objects as a landowner. The corporation make no such allegation. They say that the level crossing will be dangerous to the public. But this is a matter for the improvement commissioners, who have jurisdiction over the roads, and who take this point in their petition. The corporation do not represent the ratepayers, *quoad* the road, and have no right to raise the objection. They do not allege any objection *quod* landowners.

The CHAIRMAN: The *locus standi* of the corporation of Cambridge is *Disallowed*.

Agents for Petitioners, *Loch & MacLaurin*.

Petition of (2) EDWARD PACKARD.

Railway—Small Parcels, Carriage of—Trade Restriction—Single Trader—Distinct Interest—Representation.

Where a single trader is heard, he must show an interest distinct from the class, or else have so large a share of the whole trade that he himself represents the trade.

The petitioner, a trader of Ipswich, objected to a provision in the bill relating to the carriage of small parcels, and alleged that this provision would injure him in his business. There had been a meeting of the traders of Ipswich, but they did not petition. Two petitions, however, were presented from traders elsewhere, and their *locus standi* was not disputed:

Held, that, there being no evidence of distinct interest or representation by the petitioner, he was not entitled to be heard.

The *locus standi* of the petitioner was objected to, because (1) he is only one of a class; (2) he does not allege that he suffers any special injury; (3) he is not entitled to represent the public or the class to which he belongs, and has no special interest.

Pember, Q.C. (for petitioner): The bill proposes that the provisions of the Great Eastern Railway Act, 1862, relating to small parcels, shall apply to small parcels conveyed by any train on any line of the company, and not simply to parcels conveyed by passenger train. This

will injuriously affect the petitioner, who is one of the largest merchants of Ipswich.

Little, Q.C. (for promoters): We object to this single Ipswich trader, because the traders of Ipswich held a meeting to consider the advisability of petitioning, and nobody but Mr. Packard has petitioned. As far as we know, he has no interest differing from that of any other trader. Where a single trader is heard he must have a separate interest.

Mr. RICKARDS: Or else so large a share of the whole trade that he in his own person represents the trade.

Little: Yes; but Mr. Packard is silent as to the extent of his trade. In the *North Eastern Railway Bill* (2 Cliff. & Steph. 147) the *locus standi* of the members of an iron association, said to comprise nearly all the iron manufactories between the North Riding of Yorkshire and Newcastle, was refused.

Mr. RICKARDS: That turned upon the form of the petition.

Little: In the *Great Western and Swansea Canal Bill* (2 Cliff. & Steph. 247), freighters of minerals, and in the *Forth and Clyde Navigation Bill* (1 Cliff. & Steph. 66) Messrs. Murdochs were refused a *locus standi*.

The CHAIRMAN: The *locus standi* of Edward Packard is *Disallowed*.

Agents for Petitioner, Hayes, Twisden, & Parker.

Agents for Bill, Sherwood & Co.

IMPERIAL GAS BILL.

Petition of (1) GAS LIGHT AND COKE COMPANY;
(2) VESTRY OF ST. MARY, ISLINGTON.

19th April, 1875.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. RICKARDS; and Mr. BONHAM-
CARTER.)

*Practice — Hearing — Adjournment — Till after
Result of Motion in Parliament.*

Before the hearing by the Court, counsel stated that Sir Charles Adderley would, on the 4th of May, bring forward a motion in the House, to refer this bill with two other gas bills to a hybrid Committee, nominated partly by the House and partly by the Committee of Selection, so that if the motion were carried, this bill would not be relegated to an ordinary Committee:

The Court, therefore, suggested that it would be more convenient to adjourn the consideration of this case till the decision of the

House had been given on the motion, as it might alter the relations of the parties.

The case was accordingly adjourned by consent of the parties. It came on for hearing again before the Court of Referees on the 27th May, the decision being the same as in the *Commercial Gas Bill*. [*Vide supra* 149.]

Agents for Bill, Sherwood & Co.

Agents for Petitioners (1), Wyatt, Hoskins, & Hooker.

Agent for Petitioners (2), Layton.

LONDON AND ST. KATHERINE'S DOCK BILL.

Petition of (1) THE EAST LONDON WATERWORKS COMPANY.

10th March, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSITH, M.P.; and Mr. RICKARDS.)

Dock Company—Extension of Works—Waterworks—Interference with Mains—And Water Supply—Pipes Laid in Roads—In Private Lands—On Suffrance—Alteration of Loco—Waterworks' Clauses Act, 1847—Railways' Clauses Act, 1845.

A bill authorising new works in extension of existing docks was opposed by a waterworks company, empowered by statute to supply water to the district in which the new works were situated. The petitioners had laid down their mains in the promoters' land, and objected to the disturbance which would be caused by the projected works. They had also, under powers contained in their Act, laid down pipes along the course of certain roads, which the promoters would be enabled to interfere with by clause 3 of the bill. The petitioners alleged that provision was made by the General Acts for the protection of gas and waterpipes interfered with by railway works, but that no such protecting clause existed with regard to interference by dock works, or was contained in the bill:

Limited *locus standi* allowed, by consent, against sub-section 5 of clause 3, for the purpose of preventing interference with the waterpipes along the roads in question.

The *locus standi* of petitioners was objected to, because (1) no lands, property, or interest of theirs will be taken or affected; (2) their mains laid under the out, connecting the Victoria docks with the Thames will not be affected; (3) their mains laid in lands situate to the east of the Victoria docks were laid and are maintained on sufferance only, the land belonging to the promoters, who have the right to require the removal of such mains at any time; (4) such rights as the petitioners may have in respect of the mains laid in the East Ham Hall and Woolwich manor ways, or under the provisions of the Waterworks' Clauses Act, 1847, do not entitle them to be heard; (5) the alleged insulation of the district of supply will not in fact result from the execution of the works as proposed, but even if it did, it would not entitle them to be heard; (6) they are not affected by any provision of the bill; (7) they have no interest in the bill entitling them to be heard.

Clerk, Q.C. (for promoters): The proposed works will interfere with our mains, and may deprive a large area of its water supply. Where railways interfere with gaspipes or waterpipes the case is provided for by the Railways' Clauses Act, 1845, section 18. Here we have no such protection.

Thomas (for promoters): The fact that the petitioners have laid their mains in the East Ham Hall and Woolwich manor roads under the Waterworks' Clauses Act, does not give them a right to be heard against the preamble, but only against the clause referring to those roads.

Clerk: We only desire to be heard against paragraph 5 of clause 3.

Thomas: We are willing to concede you a *locus standi* limited to that sub-section.

Locus standi Allowed against Sub-section 5 of Clause 3, and so much of the preamble as relates thereto.

Agents for Petitioners, *Bircham & Co.*

Petition of (2) THE METROPOLITAN BOARD OF WORKS.

Extension of Docks—New Works—Metropolitan Board of Works—Jurisdiction of—As to Roads—Outfall Sewer—Interference with Roads—District Board—Road Trustees—Main Drainage System—Statutory Obligation to Complete—Interfered with by Bill—Drainage Works Obstructed—Limits of Deviation—Existing Drainage Works, not within—S. O. 135 (Municipal Authorities, &c.)—Discretionary Power of Court under—Evidence.

Against a bill promoted by a dock company for the extension of their docks, the Metropolitan board of works claimed a *locus standi* on the grounds (1) that the bill authorised interference with certain roads within

their jurisdiction, and (2) that the proposed new works would obstruct the future extension of the main drainage system of the metropolis, which the petitioners were under statutory obligation to carry out. Engineering evidence was adduced to show that the roads to be interfered with (by clause 6 of the bill) were within the limits of the petitioners' jurisdiction, and also that, although no portions of the existing works of drainage were within the limits of deviation, the proposed extension of the docks would obstruct the development of the main drainage system. On behalf of the promoters, it was contended that S. O. 135 left it to the option of the Court to grant the Metropolitan board a *locus standi*; and that apprehended interference with future works of drainage formed no adequate ground of *locus standi*, which, at any rate, ought to be limited to the clauses respecting roads:

Held, however, that the Metropolitan board of works were entitled to a general *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2) no rights, powers, duties, jurisdiction, or privileges of theirs are affected; (3) they will not be injuriously affected; (4) it is not the fact that, nor is it alleged in what manner, their main drainage system will be interfered with; nor is it the fact that the proposed works will convert certain specified districts into an island, or will cut off the connection of the intercepting sewers from any towns near the petitioners' reservoir at Barking Creek; (5) the Manors ways, and other public ways are not vested in or under the petitioners' jurisdiction; (6) no reason is alleged or shown for requiring the promoters to execute any of the works referred to in the petition; (7) it is not shown how the serious public inconvenience, which the petitioners allege, will result from the construction of the works; and even if it were, the petitioners can only be heard upon matters within their jurisdiction, none of which are affected; (8) no public interests entrusted to their charge are prejudiced; (9) they have no interest in the objects of the bill entitling them to be heard.

Shrubsole, Parliamentary Agent (for petitioners): The works sought to be made by this bill are partially within the limits of the Metropolitan board of works.

Mr. RICKARDS: Is the Manor Road maintained and repaired by the Metropolitan board?

Shrubsole: No; but the Metropolitan board have always been admitted against interference with roads, though the district board has been also heard. A portion of this Manor Road is within our boundary. By clause 6 of the bill, "The company may for any purpose of this Act

cross, divert, raise, lower, alter, or stop up temporarily or permanently all ways, footpaths, streams, water-courses, drains, culverts, and pipes within the limits of deviation shown on the deposited plans, and the company may in the execution and for the purposes of the alteration by this Act authorised of the North Woolwich branch railway, divert temporarily that railway." We allege that the construction of the works will prejudicially affect the main drainage system executed by us, as well as interfere with East Ham Hall Manor Way, and Woolwich Manor Way, and other public ways; and we say that the company ought to be obliged to execute all such protecting works as the requirements of our drainage system now or at any future time may render desirable.

Mr. RICKARDS: With reference to clause 6, do you allege that there are any drains which belong to the Metropolitan board within the limits of deviation?

Shrubsole: No. We are rather anticipating what we shall have to do, and the drainage with which the proposed works will interfere. Although we have not yet made any sewers in the district covered by the bill, there is an obligation upon us to do so. That district drains into the Thames, which is a thing that cannot be long allowed.

Mr. RICKARDS: You speak rather doubtfully about part of the Manor Way being within your jurisdiction. Could we not have that point cleared up?

Sir J. W. Bazalgette, Engineer of the Metropolitan Board (called and examined by Shrubsole): The works proposed by the bill will cut off a portion of the metropolis at North Woolwich from our main drainage system. The Manor Way is partially within our limits, and will be interfered with by clause 6.

Cross-examined by Thomas (for promoters): Besides the Manor Way, there is a public footway, across land which belongs to the Victoria Dock company, and upon which the works are proposed to be constructed. It is our duty to divert the drainage from North Woolwich, which at present drains into the river, into the high level sewer, but this dock, as now proposed, would prevent us from doing so. Our Act gives power to carry our sewer through any lands which may be necessary for the purpose. We cannot complete our works without connecting the sewerage of the North Woolwich district with the Barking outfall, and we cannot make this connection without some way of getting across the main dock, which would lie at a lower level than our sewers. The extended docks of the promoters will be partially within our limits.

Thomas (in reply): S. O. 135 gives a discretionary power to the Court to hear or exclude the Metropolitan board. Here they ask for a locus against both clauses and preamble, first, because they have jurisdiction over a little road the land of which is vested in the dock company, but over which the public have a right of way; and, secondly, because they ought to have something to say about the drainage. As to the locus, the Metropolitan board have a right to be heard and will be heard; and as to drainage works, the petitioners have no right to be heard in

respect of what they propose to do in the future.

Mr. PEMBERTON: They say there is a statutory obligation upon them to carry out in this locality works of drainage with which these docks will interfere?

Thomas: Their powers will remain precisely the same after our Act is passed as now.

Mr. RICKARDS: But the execution of your works may greatly obstruct theirs.

Mr. PEMBERTON: They say that your works "may render it impossible for the drainage works to be constructed?"

Thomas: They say our dock extension may make their drainage system more costly. That is a most unreasonable ground of *locus standi*. At any rate, if entitled to be heard at all, the petitioners can only be heard against the clauses which may affect their drainage under the dock.

The CHAIRMAN (after deliberation): The *locus standi* of the Metropolitan Board of Works is *Allowed*.

Agents for Petitioners, Dyson & Co.

Petition of (3) VICTORIA GRAVING DOCK COMPANY.

Dock Company—Graving Dock—Access to Petitioners' Dock—Through that of Promoters—Lessors and Lessees—Breach of Faith—Covenants in Lease—Competition—Traders—Discretion of Court as to Locus Standi of.

A dock company promoted a bill which, *inter alia*, by clause 4, authorised the construction of graving docks. The petitioners claimed to be heard against this clause, as a company whose only access to their graving dock was through the promoters' existing dock, and also as lessees of the promoters, there being, as they alleged, covenants in the lease which restricted them from procuring any independent access to their dock, and from competing with the business of the promoters. In reply, the promoters contended that the petitioners had all they bargained for under the lease, the lessors not being restricted by it from having graving docks of their own, and being actually authorised to construct such docks at the time the lease was made. They urged further that this was merely a case of competition between traders, and that it was discretionary with the Court to grant or refuse a *locus standi* on this ground:

Held, that the petitioners were not entitled to be heard.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or interest of theirs, and no rights under their lease, will be affected; (3) they were not induced to make graving docks in the Victoria docks upon the understanding that the Victoria dock company would not themselves construct graving docks or become competitors with them. No such restrictive provision is contained in the lease, and the petitioners cannot import matter not appearing upon the face thereof; (4) they are not affected by any provision of the bill; and (5) have no such interest in its objects as entitles them to be heard.

Bidder, Q.C. (for petitioners): We only claim a *locus standi* against clause 4, which empowers the promoters to construct graving docks. Through various mesne assignments we are now lessees, and the promoters are lessors under a lease for 99 years, granted in 1858 by the Victoria dock company for the purpose of the construction of a graving dock in connection with their dock system. We are by covenants in the lease restricted from procuring any independent access to the graving dock so constructed and from competing with the lessors, who now, however, come for powers to enable them to construct graving docks of their own. This will be an infringement of our rights under the lease, and also a case of injurious competition, as the position of our graving dock places us completely at the mercy of the promoters. (*Aberdare and Aberaman Gas Bill*, 1 Cliff. & Steph. 111; *Widnes Gas Bill*, *Ib.* 116; *Liverpool Improvement Bill, Petition of Slaughter-house Keepers*, *Ib.* 71.)

Thomas (for promoters): If the petitioners have a right to a *locus standi*, so has every graving dock proprietor on the Thames. There is no such competition here as would entitle petitioners to a *locus standi*, and the case is distinguishable from the cases cited. When the lease was made we had a statutory power of constructing graving docks, although we did not see fit to exercise it. The existence of that power was known to the lessees at the time, and was not restricted by the lease, but it has since lapsed, and we are now seeking to revive it.

Locus standi Disallowed.

Agent for Petitioner, Gale.

Petition of (4) LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railway—Dock Company—Former Legislation—Agreement—Dock Tramways and Railway—Right of User—Enlargement of Docks—New Entrance to River—Apprehended Abandonment of Old Dock—Statutory Rights—Claim to—Extension of—To New Dock.

In 1864 an Act was passed for the amalgamation of the Victoria and London and St.

Katherine's dock companies; and the London and North Western railway company thereby obtained powers to use without charge the tramways, railways, and other conveniences of the amalgamated companies for the conveyance of goods to the docks. The dock company now promoted a bill authorising the extension of their docks, and a new access to them from the river; and the North Western petitioned on the ground that when the promoters had made the extended dock, they would, or might, use it not as an addition to, but in substitution for, their existing dock, so as to defeat the privileges of the petitioners. The bill, however, did not bear out this allegation, and the promoters, repudiating such intention, contended that the right conferred on the North Western company in respect of the existing dock afforded no ground for claiming the concession of like privileges in respect of a new dock, or an extended dock system:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be interfered with; (2) their rights under the London and St. Katherine's Dock Act, 1864, and (3) under an agreement, confirmed by an Act of 1872 to use part of the Great Eastern line will not be interfered with; (4 and 5) they are not entitled to have the privileges given them by the Act of 1864 extended, as they claim; (6) no provision of the bill affects them; (7) the petition does not show that they have any interest entitling them to be heard.

Pope, Q.C. (for petitioners): The Act authorises a new entrance to the river from the new works of the company in Gallows Reach, and this new entrance will give them access to the Thames below Woolwich. The probable result will be that the new docks and new entrance will be used to the exclusion of the existing docks. By section 147 of the St. Katharine's Dock Act, 1864, we are empowered, with others, to use free of charge the tramways and other conveniences in the docks, and space is to be provided for the erection of offices for our clerks. If the traffic is diverted from the old docks we lose the advantage of the privileges granted in 1864. The same privileges ought to be granted us over trams, &c., in the new docks.

Thomas (for promoters): The extensions are the same as those sanctioned in 1853, but the time for making them expired in 1862. When the London and North Western obtained in 1864 privileges over the existing tramways, &c., they should have asked Parliament to extend the privileges to any further docks, which they must have known were probable. They did not do so, and it is unreasonable to ask for such privileges

in our new docks. No interest of the London and North Western railway is touched in any way by the bill.

Mr. RICKARDS: What was the basis of their *locus standi* in 1864?

Thomas: The amalgamation of the St. Katherine's and Victoria Docks; but a *locus standi* granted in 1864 does not give them one now against a bill which does not interfere in any way with the advantage they then got.

Pope: The bill authorises the construction of works which may enable you to prejudice the rights given us in 1864.

Thomas: It is said that because we extend our dock, we may *pro tanto* abandon the old docks in favour of the new one. In order that the petitioners may found a *locus standi* upon that allegation there must be something in the bill to confirm it, or they must show that from the circumstances of the case it must necessarily be our interest to do so. There is nothing whatever in the bill to this effect, nor can it be shown that it would be our interest to abandon any portion of our existing dock system.

Locus standi Disallowed.

Agent for Petitioners, Roberts.

Agent for Bill, Rees.

LONDON AND NORTH WESTERN RAILWAY (NEW LINES, &C.) BILL.

Petition of (1) MID-WALES RAILWAY COMPANY.

12th April, 1875.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Railway—Joint Ownership of—In Substitution for Competing Line—Duplicate Line Avoided—Existing Agreements with Third Company—Independent Access to Town—Diversion of Traffic—Competition—Improvement of Existing Competition—Creation of Monopoly—Traffic Arrangements—Running Powers—Alleged Change in Status.

The bill proposed to confirm an agreement under which the London and North Western railway company would become joint-owners of part of the Brecon and Merthyr railway. The petitioners alleged that they would be practically deprived of the benefit of an existing agreement with the Brecon and Merthyr company if the London and North Western were thus allowed to possess themselves of a competing route to Merthyr; that they were already hardly pressed by competition, and that the command of a rival route by the promoters would frustrate

the objects for which the petitioners' line was constructed, and render useless the capital they had laid out. The promoters replied that in the preceding session they had obtained powers to make an independent line of their own into Merthyr, which the Mid-Wales did not, and could not, oppose; but an agreement was then come to, which the present bill would confirm, in order to save the London and North Western the expense of making this duplicate line, and admit them instead to a joint-ownership of part of the Merthyr line. This arrangement, it was argued, could not affect the course of the traffic in which the Mid-Wales company was interested. It would still be the interest of the Merthyr company to send this traffic along the existing route, and the petitioners, therefore, would not be prejudiced:

Held, that there was no such change in the status of the petitioners under the bill as entitled them to be heard against it.

The *locus standi* of the petitioners was objected to, because (1) the only portion of the bill to which they specifically object is that which by confirming the agreement scheduled thereto, empowers the promoters to become joint-owners of a portion of the railway of the Brecon and Merthyr Tŷdŷil junction railway company, and the ground of the objection is stated to be, that thereby the promoters will obtain an independent access to Merthyr and the Vale of Neath railway, that the whole of their traffic can and may be diverted from the petitioners' railway, and that the Brecon company will be enabled to take the whole of their traffic, via Merthyr and Abergavenny and Shrewsbury, to the exclusion of the petitioners' railway. But those statements and apprehensions, even if well founded, do not establish any such competition or interference with competition or diversion of traffic as entitles the petitioners to be heard; (2) the promoters have already access to Merthyr from Shrewsbury and Hereford and Abergavenny and by the Brecon company's railway and the Vale of Neath railway, wholly independent of the petitioners' railway, and by those means the promoters could at the present time, if they thought fit, divert the whole of their traffic between those places from the petitioners' railway; (3) the agreements and arrangements referred to in the petition will not be so varied or affected by the bill or the agreement as to entitle the petitioners to be heard; (4) as regards the Brecon company, the bill does not, nor does the agreement, confer upon them any powers whatever relating to traffic or diversion of traffic, in which respects they will remain precisely in the position in which they now are; (5) if the competition between the promoters' and the petitioners' systems of railway were materially

affected by the provisions of the bill (which the promoters wholly deny), it would be not by setting up a new competition, but by improving an existing line of competing communication, and that is not a matter upon which the petitioners are entitled to be heard.

Little, Q.C. (for petitioners): We ask to be heard against clauses 35 and 36 which confirm an agreement for the joint-ownership of a portion of the Brecon and Merthyr railway by the London and North Western and the Brecon and Merthyr companies, and for the constitution of a joint-committee. The promoters, having a large number of lines into South Wales, want to get to Merthyr among other places, and not being able to get to Merthyr in any other way, they promoted last year a new line of their own running parallel to part of the Brecon and Merthyr. The result has been that the Brecon and Merthyr, rather than have a new line made, accepted the offer of the promoters to become joint-owners of the existing line. Up to the present time the Brecon and Merthyr company have had an interest in sending unconsign'd traffic equally by our route to Manchester and Birkenhead as by the London and North Western route, and have been dependent on the Brecon and Merthyr for getting there, but the consequence of their becoming joint-owners of the Brecon and Merthyr line (as they propose by the bill) will be that traffic for the northern district will be sent by the London and North Western route instead of by our route.

Pope, Q.C. (for promoters): As things now stand, the London and North Western are at Merthyr over a line of their own, because they have got power to make a line of their own. What difference does it make whether we run over the metals of the Brecon and Merthyr or make a new line of our own within ten yards of it?

Little: All the difference in the world. When the North Western become joint-owners of the Brecon and Merthyr it ceases to be the interest of the Brecon and Merthyr to forward traffic to us for conveyance to the north as heretofore, and they will become wholly independent of us. Besides the resulting damage to us from this bill, the promoters have, by existing legislation, powers to book through, and other facilities for forwarding traffic over our railway, *via* Builth, and we are ready and willing (as we allege in our petition) to give every effect to those powers and to carry on the traffic of the company into Merthyr. Therefore the bill will affect existing agreements; and at the same time, if passed, will increase the monopoly of the London and North Western, and render worthless to the public the route afforded by our railway.

Pope (in reply): What is proposed to be done by the bill is simply this. Instead of the London and North Western constructing a new railway, they buy, not the Brecon and Merthyr, but half the interest in the permanent way of the Brecon and Merthyr. As far as the interest of the London and North Western in Merthyr is concerned, it is exactly the same in the one case as in the other. The only difference will be that instead of our running upon the

line which would have been constructed alongside the Brecon and Merthyr, we shall run upon the metals of the Brecon and Merthyr, and inasmuch as the bill leaves the rights, responsibilities, and liabilities of the two companies unaffected, and involves no control of traffic, and no preference to the London and North Western, it is difficult to see how the Mid-Wales can have any objection, when their running powers and rights over the Brecon and Merthyr line will remain the same as they are.

The CHAIRMAN: The *locus standi* of the Mid-Wales company is *Disallowed*.

Agent for Petitioner, *Gale*.

Petition of (2) LORD LICHFIELD AND MESSRS. ADDISON AND BAXTER, ORDINARY AND PREFERENCE SHAREHOLDERS OF THE WOLVERHAMPTON AND WALSALL RAILWAY COMPANY.

Railway Companies—Amalgamation—Vesting Railway in Promoters' Company—Confirmation of Agreement for—Opposed by Shareholders of Company to be vested—Corporate Seal of vested Company—Ordinary or Preference Shareholders—Distinction Between—S. O. 133 (Shareholders Petitioning against Seal)—Protection of Minority—Distinct Interests—Doctrine of, how far applicable to Ordinary Shareholders—Agreement Circulated among Shareholders—Differing from that Scheduled to the Bill—Shareholders thereby Misled—Insufficient Allegation—Common Seal—General Rule as to—Exceptions—Representation—S. O. 161 (As to Preference Shareholders)—View of Court respecting—Reduction of Dividends—Deterioration in Status—Wharncliffe Meeting—Dissentient Shareholder—S. O. 73.

The bill proposed (*inter alia*) to amalgamate with the promoters' company the Wolverhampton and Walsall railway (already leased by them), and to regulate the dividends to be thereafter paid to the ordinary and preference shareholders in the Wolverhampton company. The Earl of Lichfield, as an ordinary shareholder, and the other petitioners, as holders of preference stock, opposed this portion of the bill on the ground that its effect would be to reduce the dividends to which the preference shareholders were entitled, and limit the dividends on the ordinary stock instead of leaving the whole of the surplus profits divisible among holders of this stock, as at present. On behalf of the preference shareholders, it was urged that they were entitled to a *locus standi* under S. O. 133, and upon the authority of

decided cases, as having an interest distinct from that of the general body of shareholders. On behalf of Lord Lichfield as an ordinary shareholder it was contended that S. O. 133 only precluded opposition by such shareholders when the bill was promoted by their company, whereas this bill was promoted by a third company; and further that the petitioner had opposed the adoption of the bill at the Wharncliffe meeting, and when outvoted had announced his intention to object before Parliament. Allegations were also made of discrepancies between the agreement circulated among the shareholders and that scheduled to the bill; but the Referees considered that the point that shareholders might thereby have been misled was not raised with sufficient distinctness by the petition. For the promoters it was contended that petitioning preference shareholders must represent the class, or have an interest distinct from that of the class; and as to the ordinary shareholder who petitioned, that although the bill was not promoted by the company of which he was a member, the common seal of his company was affixed to the scheduled agreement, and he could not appear against the common seal, except as a dissentient shareholder in the second House under the Wharncliffe order:

Held, that Lord Lichfield, as an ordinary shareholder, had no *locus standi*, but that Messrs. Addison and Baxter, as preference shareholders, were entitled to be heard.

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The *locus standi* of the petitioners was objected to, because (1) their interests whether as holders of ordinary shares or of preference shares, or of shares of both classes, are in no respect different from the interests of other ordinary or preference shareholders, and they are not entitled to be heard either on their own behalf or on behalf of any class of shareholders; (2) the distinction sought to be set up between the interests of the petitioners in respect of the ordinary shares held by them and the general interests of their company is fallacious and in fact does not exist; (3) the proposed vesting is sought in pursuance of an agreement made between the promoters and the Wolverhampton and Walsall railway company under their respective common seals, which agreement has been approved by a meeting of the last-named company specially convened for the purpose, and the petitioners, as shareholders in that company, are not entitled according to the practice of Parliament to be heard against the carrying out of an agreement so made and confirmed; (4)

the petition contains numerous statements bearing upon the relations between the promoters and the Wolverhampton and Walsall railway upon the terms of the aforesaid agreements, but these statements, even if true (which the promoters deny) do not, taken either separately or collectively, disclose any such ground of objection as entitles the petitioners to be heard.

Granville Somerset, Q.C. (for petitioners): Clause 34 of the bill vests the Wolverhampton and Walsall railway in the promoters' undertaking, and specifies the footing upon which the shareholders in the Wolverhampton railway will stand after that vesting. The preference shareholders will for the future be paid a dividend of £4, whereas at the present time they are entitled to a dividend of £6 per cent. Messrs. Addison and Baxter are preference as well as ordinary shareholders, while Lord Lichfield, who is the third petitioner, is an ordinary shareholder. His position and that of the other two petitioners, *qui* ordinary shareholders, is that after July, 1875, when the Wolverhampton companies will become dissolved, they will receive dividends at the rate of £2 per cent. and after 1882 £4 per cent. per annum. We object to such an enactment as calculated to deprive us of the profits of the undertaking, and to lower the rate of dividend. At present we are entitled in respect of our ordinary shares to the whole of the surplus profits arising from the undertaking after payment of the interest on debentures and preference shares, whereas by the bill we shall be limited to a low rate of dividend. Our status, therefore, will be altered for the worse, and we are entitled to be heard to compel the promoters, when they acquire our concern, to carry out the agreements originally made by our company with their shareholders. Having stated in what way we shall be injuriously affected both as ordinary and preference shareholders, the question is can we be heard against the seal of the company? S. O. 133 says that where a bill is promoted by an incorporated company, shareholders shall not be heard unless their interests are distinct from the general interests of the company. But S. O. 133 cannot be used to shut us out, because this bill is not promoted by our company, but by the London and North Western, who have in fact really absorbed our company. Moreover, the agreement between the two companies, which was circulated amongst the shareholders differs from that which appears in this bill.

Pope, Q.C. (for promoters): The seal of your company is affixed to the agreement scheduled to the bill.

Granville Somerset: That I admit, but it is not the agreement circulated among the shareholders.

Mr. RICKARDS: What have we to do with the agreement circulated among the shareholders when we find an agreement bearing the seal of the company? Is not the question for us whether the Wolverhampton company, by affixing its corporate seal to an agreement which the bill proposes to confirm, is bound by that act? The question on the construction of S. O. 133 is whether, the company having by their corporate seal become parties to an agreement, ordi-

nary or preference shareholders in that company have a *locus standi* to object to that agreement?

Granville Somerset: Our petition states that the agreement circulated among the shareholders as to the terms offered by the North Western to our company was in many important respects different from that which is proposed by the bill, and that at the special general meeting, the North Western company, who possess £100,000 out of our capital of £350,000, voted in favour of the agreement, while the majority, but not three-fourths in value, of the remaining shareholders also voted in favour of such a course.

Mr. RICKARDS: You contend that, by that allegation you raise the question that something took place savouring of unfairness towards the shareholders?

Granville Somerset: Yes.

Mr. RICKARDS: If the petition had gone on to state that the shareholders were misled; or that, reading the agreement which was sent round, they did not attend the meeting, relying upon the agreement set before them being the agreement to be submitted to the meeting, you would have carried the matter further.

The CHAIRMAN: The Committee think that the allegation in the petition is not sufficiently explicit to raise the question as to the difference between the agreement circulated and the agreement adopted at the meeting.

[Objection over-ruled.]

Granville Somerset: At this meeting, Lord Lichfield, on behalf of the dissentients, gave notice that he and those who agreed with him would meet the promoters in Parliament.

Mr. RICKARDS: Saying that does not give him a *locus standi* here.

Granville Somerset: No; but it shows that he was a dissentient from the majority at the meeting, and consequently is in a different position from them. With regard to the preference shareholders, S. O. 161 says that "no company shall be authorised to alter the terms of any preference, or priority of interest, or dividend, unless the Committee on the bill report that such alteration ought to be allowed, with the reasons on which their opinion is founded." How are the Committee to get their reasons unless we are allowed to appear? (*Caledonian Railway Bill, Petition of Trustees of Messrs. Baird, 1 Cliff. & Steph. 163; Crystal Palace and South London Junction, 1869, Ib. 165; Neath and Brecon, 1869, Ib. 168; South Eastern and London & Brighton, 1868, Ib. 169; Caledonian Railway Bill, 1872, Petition of Messrs. Baird and Others, 2 Cliff. & Steph. 257.*) Sir Erskine May (7th ed., p. 753) lays down the principle that preference shareholders are in a different position from the general body of shareholders. It does not signify whether one preference shareholder signs the petition or a number.

Pope (in reply): The question is whether individual shareholders can be heard against the confirmation of an agreement come to by their company under its common seal. Where a bill is promoted directly by a company, Parliament requires that, before the petition for the bill is sealed by the company, the bill shall be submitted

to their shareholders; and S. O. 133 provides that where a bill is promoted by a company, individual shareholders shall not be heard against it unless their interests are distinct from the general interests of the company. The petitioners contend that that S. O. does not apply, this bill not being promoted by the company of which they are constituents, but if they do not belong to the promoting company we are remitted back to the general question—how far can the shareholders of a company petition against their common seal? S. O. 133 can only apply where the interest of the individual petitioner differs from the interests of the other shareholders of the same class as himself, whether preference or ordinary. The petitioners here have no such distinct interest; they simply petition as dissentient members of a common class. Under the Wharnccliffe orders (73 and 83) dissentient shareholders may petition, but these S. O. only apply to the Second House. Here S. O. 133 alone applies.

Mr. RICKARDS: Supposing this was a good bargain for the ordinary shareholders, and a bad bargain for the preference shareholders, is not a preference shareholder to be allowed to say that it is a bad bargain for him as a preference shareholder? Is not that the very thing the S. O. contemplates he shall be allowed to prove if he can? Preference shareholders are a special class; ordinarily speaking, they have no right of voting. Surely where a bill, as appears to be the case here, affects his preference rights, a preference shareholder is entitled to be heard. We have decided more than once that a preference shareholder has an interest distinct from that of the general body of shareholders. There may be cases where it is the interest of the bulk of ordinary shareholders to sacrifice the preference shareholders.

Pope: Yes; but the words of the S. O. are "general interests of the company," not the interests of "any part of the company." Why should this argument be applicable to ordinary shareholders, and not to preference shareholders?

Mr. RICKARDS: Because this S. O. was intended to protect the minority, which is the case of the preference shareholder, who generally has not the right of voting. Sir Erskine May's interpretation of the S. O. is given in these words:—"A proprietor of preference shares has a special interest often opposed to that of the general body of the shareholders." That is the sense in which the Referees have interpreted the S. O.

The CHAIRMAN: The *locus standi* of Lord Lichfield, being an ordinary shareholder, is *Disallowed*. The *locus standi* of Messrs. Addison & Baxter, preference shareholders, is *Allowed*.

Agents for Petitioners, *Baxter & Co.*

Petition of (3) LLANELLY RAILWAY AND DOCK COMPANY.

Railways — Junction — New Line — Company having Running Powers, &c., over Existing Line

—Apprehended Substitution of New Line—
Existing Line, not Authorised—Abandonment
Apprehended.

In an omnibus bill the London and North Western railway company sought power to construct a line, to be called the Swansea junction. This portion of the bill was opposed by the Llanelli railway and dock company, who alleged that they at present had running powers over a junction line constructed by the Swansea and Carmarthen company (now the London and North Western), but without Parliamentary authority, and that the North Western company were now asking to make a similar junction in substitution for it, whereby the petitioners would be deprived of their access to the Swansea lines. They therefore claimed the same running powers over the substituted line as they already had over the existing line, which the promoters might at any time abandon if they thought fit:

Held, that they were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no sufficient reasons exist why they should have running powers and traffic facilities over the proposed Swansea Junction railway in like manner as they have over other parts of the Swansea line, of which they allege the proposed line will form a part; (2) the circumstances and considerations on which they were granted running powers over the Swansea line are wholly inapplicable to the present case; (3, 4, and 5) they have no such interest in the bill, nor does their petition allege any such ground of objection as entitles them to be heard.

Michael (for petitioners): The Swansea lines to which our petition refers, and over which we now have running powers and traffic facilities, were transferred in 1871 to the Swansea and Carmarthen railway company, and have since become the property of the promoters. Before, however, the last transfer was made, the Swansea and Carmarthen company made a short piece of line without Parliamentary power for the purpose of connecting the Llanelli system with the Swansea harbour system. Over that line we have the right to run, but as it was made without Parliamentary power, it is liable at any time to be shut up. We say that this proposed Swansea junction line is really made as a substitute for that piece of line, and not as a mere extension line, and that we ought to be put in the same position in regard to the substituted line as we are in regard to the line already existing. Although it may be answered that the promoters are under no obligation to keep up the existing portion, yet without the junction which it affords with their other lines, their railway would be useless, so that unless the pro-

posed line is sanctioned, they must maintain the existing junction line.

Pope, Q.C. (for promoters): The bill contains no provision for the abandonment of the existing line.

Michael: But it is perfectly clear that the object of the bill is to provide a more convenient access to the same system, and it is unreasonable to suppose that the promoters will keep up what will then be a superfluous piece of line.

Pope (in reply): The only ground upon which the Llanelli company found their claim to a *locus standi* is this: they admit that, in an ordinary case, they would not be entitled to ask for running powers over an extension line, but they say that inasmuch as they have the use of a somewhat inconvenient junction, which is not authorised by Parliament, and is, therefore, liable to be abandoned, they ought, because they have chosen to accept those running powers over the unauthorised line, to be put in a better position than they are now by getting running powers over a line which we ask Parliament to authorise. I submit that the possession by the petitioners of running powers over an unauthorised line which we shall not have an interest in maintaining, gives them no right to claim running powers over the better line which we now propose.

Locus standi Disallowed.

Agents for Petitioners, Dym & Co.

Petition of (1) THE EARL OF STAMFORD.

Canal—Railway Company Owning—Increased Powers to Supply Water from—Riparian Owner—Injury to by Abstraction of Water—Existing Act Regulating Supply—Alteration of Existing Rights under—Mills and Works—Water Supply to, from Canal—Steam Engines—Canal Water for use of—Riparian Owner—Distinction between Rights of—Over Canal—and Stream.

By the Huddersfield Canal Act, the owners of lands adjoining the canal, and within 80 yards of it, were empowered to draw water therefrom for the use of steam engines, upon certain terms and conditions. The railway company owning the canal now promoted a bill which, *inter alia*, practically did away with the limit. Lord Stamford, as owner of mills and works situated within the 80 yards' limit, objected to the change on the ground that if manufacturers beyond this limit were supplied, more water would be drawn away than the canal could spare, and the value of his existing prop-

leges would thus be impaired. It was answered that riparian owners on the banks of a canal had not the same rights as those on the banks of a natural stream, and that Lord Stamford could not complain of powers sought by the canal owners to dispose of water which belonged to them: *Held*, that on this ground the petitioner was not entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) he does not specify what injury, if any, will be occasioned to him or his tenants by the power sought by the promoters to supply water from their canal; (2) his interest in the canal and its maintenance does not entitle him to be heard according to practice; (3) neither he nor his tenants have any such interest in the Huddersfield canal as entitles him to be heard on his own or their behalf.

Shrubsole, Parliamentary Agent (for petitioner): The powers applied for by this bill practically enable the promoters to become waterworks proprietors. They own the Huddersfield canal, and section 69 of the Huddersfield and Manchester Railway and Canal Act, 1845, authorises riparian owners within 80 yards of this canal to take water for the supply of their steam engines, paying 5s. a year per horsepower. Under the bill, however, the price is to be agreed upon between the parties supplied and the promoters, who will be able to supply to any distance and to any amount for manufacturing and condensing purposes. This power will altogether alter our status, and do us great injury. As it is, the canal is nearly dry in the summer months, and it is most inexpedient that any further abstraction of water from the canal, other than that already authorised, should be permitted.

Pope, Q.C. (for promoters): There is nothing in the bill prejudicially affecting the rights of the Earl of Stamford. A canal is not like a river in respect of riparian rights. There are no such rights on the banks of a canal. The water belongs to the canal company, and, except for statutory rights to take water from it, no riparian owner has any right in the water whatever. [*He was then stopped.*]

Locus standi Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *Roberts.*

LONDON CENTRAL RAILWAY (ABANDONMENT) BILL.

Petitions of (1) Mr. W. BIRD; (2) Messrs. CROSSE AND BLACKWELL.

27th May, 1875.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.*)

Railway — Abandonment — Release of Deposit Money — Landowner — Creditors — Indemnity — Costs of Opposing Previous Bill — Power of Committee to Award — Agreement to Pay — Condition of withdrawing Opposition — Agreement not affected by Bill — Costs' Act — Capital of Company — First Assets of Company — Lien on — Winding-up Company — Board of Trade — Warrant of Abandonment — Court of Chancery — Jurisdiction of — Ousted by Bill — Liability of Directors — Remedies against — Inaccurate Recital in Preamble — Effect of Estoppel — Official Liquidator — Contributories — Dissolution of Company — Debts to be Paid before.

A bill to authorise the abandonment of a railway and release the deposit-money was opposed by (1) a landowner on the ground that the bill made no provision for carrying out an agreement between himself and the company, whereby, in consideration of his withdrawal from opposition to their original bill, they bound themselves, in case they required any part of his property, to take the whole, and in compensating him for it to pay him also a sum of money on account of the costs he had incurred in opposing their bill. (2) Two other petitioners had entered into similar agreements with the promoters, who, however, had undertaken to pay their costs out of the "first assets" raised by the company under the original Act. The preamble recited (as the petitioners alleged, inaccurately) that no capital had been raised, so that there were no assets to satisfy the claim, while the terms of the agreement gave the petitioners no lien upon the deposit. They contended, like the first petitioners, that they were entitled to the insertion of a clause specially recognising their rights under the agreement:

Held, that (under the Costs' Act) the Committee would not award the costs of opposition to a previous bill; and that as the present bill provided for the discharge out of the deposit-money of all liabilities, &c., of the company previous to its dissolution, any rights obtained by the petitioners under their respective agreements would be unaffected by the bill. The *locus standi* of both petitioners was therefore disallowed. [*See also Dublin, Rathmines, &c., Railway Bill, supra, p. 11; and Harrow, London, and Edgware Railway Bill, ib. 83.*]

The *locus standi* of Mr. Bird was objected to, because (1) he does not object to the abandon-

ment which the bill authorises, but to the making of the works, which by the bill are proposed to be abandoned; (2) no right or claim or remedy he may have against the promoters is in any way prejudiced or interfered with by the bill; (3) he alleges that the promoters ought to abandon their undertaking in manner provided by the general public statutes and law in that behalf, but there are no such general public statutes or law under which it could be abandoned, and the provisions of the bill are those usually enacted by Parliament in cases of abandonment; (4) he has not, nor does his petition allege that he has, any such interests in the bill as entitle him to be heard according to practice.

The *locus standi* of Messrs. Crosse and Blackwell was objected to, because (1) the bill contains the usual provisions inserted in all abandonment Acts, expressly providing for compensation to landowners in respect of any damages sustained by them by reason of the non-completion of the purchase of their lands; (2 and 3) no rights or claims of the petitioners are prejudicially affected by the bill; (4) they are not entitled to a hearing according to practice.

Sir Mordaunt Wells (for Mr. W. Bird): The bill sanctions the abandonment of the railways and works authorised by the London Central Railway Act, 1871, and the release of the deposit-money, and relieves the promoters from all penalties, liabilities, and obligations with respect to the non-completion of the works. We are landowners of the Lowther Arcade and a number of houses which were proposed to be taken under that Act. We opposed that Act, and are still opposed, on private and public grounds, to the scheme which it contemplated; but we withdrew our opposition to it in 1871, on an agreement between the promoters and ourselves that if they took any of our property they would take it all, and that they would also pay the costs we then incurred in opposing the Act. We say, therefore, that the promoters are not entitled to get Parliamentary powers by this bill to escape from the liabilities they then incurred towards the public or ourselves under the agreement.

Mr. RICKARDS: If you were allowed to go before the Committee I do not think they would entertain the question of costs incurred by the petitioners in opposing a bill promoted in a previous session.

Wells: Under our agreement, if the company completed their works, we should be entitled to our costs.

Mr. RICKARDS: The agreement will be valid notwithstanding this bill. There is nothing in the bill contrary to the agreement.

The CHAIRMAN: You pray to be heard against the abandonment when you have all along wanted that abandonment; but, apart from this point, the Committee could not help you to recover your costs if you got your *locus standi*.

Locus standi Disallowed.

Batten (for Messrs. Crosse and Blackwell): The fund from which we were to be paid under the agreement was specially ear-marked. It was to be "the first assets" of the company, not the deposit. We have been prevented by

the Act from dealing with our property and from erecting new buildings, and we say that the promoters should be put upon terms, in their present bill, to compensate us and pay the costs which they stipulated to pay us. The company ought to proceed under the Abandonment Acts, which would regulate the distribution of assets, and it is contrary to public policy to grant special powers to a company by special legislation when the existing law suffices for the purpose. The preamble recites that no part of the capital has been raised, but we should prove before the Committee that part of such capital has been raised, so that but for the bill we should get paid out of available assets. The bill takes away from the company the power of realising assets, and therefore deprives other creditors of our remedy against the directors. (*Teign Valley Railway Company*, 1 Cliff. & Steph. 83.)

The CHAIRMAN: Clause 6 provides that after the passing of the Act the company shall forthwith proceed to wind-up their affairs and "pay, satisfy, and discharge all their debts, liabilities, and engagements;" and clause 7 further provides that the company shall not be dissolved till these debts and liabilities are paid. Do not these provisions save your rights?

Batten: No; if the preamble passes, with its misstatement that no part of the capital has been raised, the Act will be a bar to our payment out of the funds which, under our agreement, should be set apart for the purpose.

The CHAIRMAN: Though the preamble says that no part of the capital is raised, it does not affect the question whether certain persons are not liable to contribute to the debts of the company.

Batten: They can only contribute, *quid* shareholders, and we can only get at them through a winding-up in the ordinary way. In the *Waterford, New Ross, and Wexford* case (1 Cliff. & Steph. 25) a petitioner who had a special agreement with the company for the payment of certain costs was allowed to appear. Here the Committee may provide that if the abandonment is sanctioned, the deposit shall become liable for the payment of our costs.

Mr. RICKARDS: Though the agreement says that it shall not be?

Batten: Yes; because the Committee may impose what conditions appear reasonable.

Sargood, Serjeant (for promoters): It is not usual for a Committee to vary contracts.

The CHAIRMAN: Do you contend that your rights are not preserved by clauses 6 and 7?

Batten: We do not fall within those two clauses. A fund has been specially allocated to us, namely, the first assets of the company; certain directors have made themselves liable to contribute to those assets; and, but for this bill, we should ask the Court of Chancery to enforce that liability. Before we can do so, however the company will be dissolved under the bill.

Mr. BRISTOWE: No; dissolution is the last step; the company's liabilities must be satisfied before the dissolution.

Batten: They are able to get back the deposit.

Mr. BRISTOWE: Your agreement excludes all claims against the deposit.

Batten: It excludes all claims against the deposit *per se*, but it does not exclude the powers we have of keeping the deposit locked up unless the promoters come to Parliament or go to the Board of Trade in the usual way. If they obtain from Parliament an Abandonment Act behind our back, we lose our remedy. If they are relegated to the Board of Trade, they are treated as a limited company, and we can apply to the Court of Chancery as creditors for a liquidator, through whom we can recover our costs from the parties liable. We are, therefore, prejudicially affected by this bill, and have a right to be heard against it.

Sargood, Serjt., was not called on to reply.

Locus standi of Petitioners Disallowed.

Agents for Bill, *Toogood & Ball.*

Agents for W. Bird, *Shepherd & Sons.*

Agent for Crosse and Blackwell, *J. B. Batten.*

METROPOLITAN RAILWAY BILL.

Petition of (1) THE GREAT WESTERN RAILWAY COMPANY.

14th April, 1875.—(Before Mr. PEMBERTON, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Hearing—Precedents—Cases Cited—Previous Bills—Proceedings before Committee on—Not Alleged in Petition—Reference to by Counsel—Distinction between, and Decided Cases.

Railway—Running Powers—By Agreement—User of Line by Third Company—Priority of Traffic—Interfered with by New Running Powers—Obstruction of Traffic—Train Service.

In the course of argument, counsel for petitioners referred to proceedings before the Committee three years previously upon a bill which he alleged to be *ad rem*. It was objected that, as the petition contained no reference to such proceedings, they could not be imported into the case before the Court:

Held, that under these circumstances the proceedings in question must not be cited as a precedent, the distinction between the citation of such proceedings and of cases decided by the Court itself being that the Court has not the means of fully investigating the proceedings before committees, and would have to enter into the whole history of such cases.

The bill provided for the conveyance of through traffic over eight railways belonging to dif-

ferent companies, and clause 25 enabled the Metropolitan railway company to further this object by admitting upon its own system the trains conveying this traffic. Under agreements with the Metropolitan company, the Great Western already possessed the right of running its trains upon part of the Metropolitan system in priority to those of other companies; and the Great Western company opposed the bill on the ground that the arrangements now contemplated would obstruct its traffic by blocking the Metropolitan line, and would thus in practice deprive it of the benefit of these agreements, even though its priority might not in terms be affected:

Held, that although the existing agreements gave the Great Western company priority, they conferred no exclusive rights, and as there was nothing in the bill to show that the petitioners would be deprived of this priority in the agreements contemplated by clause 25, they had no *locus standi*.

The *locus standi* of the Great Western railway company was objected to, because (1, 2, and 3) the agreements between the petitioners and the promoters are unimpaired by the bill, and can be enforced at law. These agreements give the petitioners no exclusive rights, and cannot be invalidated by the agreement contemplated by clause 25.

Saunders (for Great Western company): We were part-promoters of the Metropolitan company in 1854, and subscribed £180,000 towards its capital. Under the Metropolitan Railway Act, 1854, we obtained power to send over the promoters' line our passenger and goods' traffic. Again, in 1861, statutory powers of the same kind were given to us in common with the Great Northern company. Under various statutory agreements we run our trains over the Metropolitan system to Smithfield and Moorgate Street. The first of these agreements, dated January 14, 1865, gave priority to our trains, conditionally, upon a certain payment by us. Subsequently, in 1868, a modified agreement was made for the running of a certain number of trains a day. The Metropolitan were first to give preference to their own local trains, and then the Great Western were to have priority. To this right we have always attached great importance, and, considering the traffic, our interests will be greatly prejudiced unless our priority is preserved.

Sir Mordaunt Wells (for promoters): We have not the slightest desire to disturb the priority of the Great Western company.

Saunders: Though our priority may not be disturbed in so many words, it can only be preserved in practice by imposing some limit to the admission of other companies over it. We have priority, and we object to the admission of any

other company. According to the promoters, it would not matter to us if a hundred companies were admitted, provided our priority were in terms retained.

The CHAIRMAN: You object to incumbrances subsequent to your own?

Saunders: Yes. The whole case is settled by the *Buckinghamshire and Northampton* case (ante, 146), in which the question was the admission of other companies over the Metropolitan railway, and a general *locus standi* was allowed to us.

The CHAIRMAN: That case was decided principally on the ground of competition.

Wells: Clause 25 provides that nothing contained in the Act shall enable the eight companies "to run over, control and use, or interfere with" the portion of the Metropolitan railway over which the Great Western run.

Saunders: It is left to the Metropolitan to say that the running powers shall or shall not be given. The compulsory powers do not apply to the part of the line which we use, but the eight companies may obtain the same powers by agreement with the promoters, and for the purposes of *locus standi* the effect is the same. The Act really gives the Metropolitan company a power of veto, but we have no guarantee that they will exercise the power, and we say that they should not be authorised to admit these foreign companies upon their system, unless we are heard to show how our traffic and our priority will be affected. In various bills for the admission of other companies to the Metropolitan system, our priority has been expressly recognised by a proviso. I admit that we now go further, because, instead of asking for a proviso, we object to the admission of any more companies, believing there is no room for more. In 1872 a bill was brought in by the Great Eastern company, which sought powers to agree with the Metropolitan.

Wells: That matter is not alleged in your petition; you cannot therefore go into it.

Saunders: Having been counsel in the case, it is competent for me to state the facts, and cite the case as a precedent, as the practice is with regard to decided cases.

Mr. RICKARDS: Decided cases are one thing, but narratives of cases which have been brought before committees are matters which we have not the means of fully investigating; we should have to go into the whole history of such cases. If you had referred to any matter affecting the Great Eastern in your petition, you might have had a right to touch upon it in argument.

Saunders: The *Great Northern* case (2 Cliff. & Steph. 270) will no doubt be quoted against me, but that case differs from ours. We say that the amount of traffic has so increased that there is not sufficient room for the traffic of any other company. A case in my favour is the *Great Eastern Railway Bill, Petition of Metropolitan District Railway* (ante, p. 78).

Wells was not called on to reply.

Locus standi Disallowed.

Agent for Great Western Railway Company, Mains.

Petition of (2) THE LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railways—Reciprocal Running Powers—Through Traffic—Facilities for—United Management of Railways—District—Diversion of Traffic—Undertakings forming Continuous Line—Competition created by.

If it be proposed that several distinct undertakings, forming together a continuous system of railway, should be used continuously, and placed under united management for purposes of through traffic, thus "welding separate links into one continuous chain," a company whose line serves the same extreme points as the new continuous system is entitled to be heard against such a proposal on the ground of competition.

A bill promoted by the Metropolitan railway company authorised that company, and eight other railway companies scheduled to the bill, to give "reciprocal running powers," and to provide for united management in order to facilitate through traffic upon their respective systems "as though they were one undertaking." The London and North Western company, as owners of a line connecting London with various places served by the eight companies, alleged that the through route now proposed to be opened between London and Worcestershire would give the Metropolitan company the power of running between Moorgate Street and places in that county, and would thus develop a new competition with them. It was objected that, as the lines existed, or had been authorised, the competition of which the petitioners complained must already exist, or was at the utmost the improvement of an existing competition:

Held, that the bill would confer powers differing materially from those possessed by the respective companies separately, and would place these companies in new relations to the petitioners, diverting their traffic to a new route, and entitling them therefore to a *locus standi*.

(*Per Cur.*) "It is vain to contend that the use to which eight lines of railway will be put, 'under united management,' will not be different in character from the present use of the eight lines separately."

The bill was one empowering the promoters, and the following railway companies, scheduled

to the bill, to give one another mutual running powers:—Metropolitan and St. John's Wood, Harrow and Rickmansworth, London and Aylesbury, Aylesbury and Buckingham, East and West Junction, Northampton and Banbury Junction, Evesham, Redditch, and Stratford-on-Avon Junction, and any railway company which may obtain powers from Parliament to connect the Aylesbury and Buckingham railway with the East and West junction railway, or with the Northampton and Banbury junction railway. The preamble recited that "it is expedient, and will contribute greatly to the public convenience and to the welfare of the said several companies that the provisions hereinafter contained should be made for the use of the said several undertakings continuously, as though they were one undertaking, and that they should, for the purposes of through traffic, be placed under united management."

The *locus standi* of the North Western railway company was objected to, because (1 and 2) no new means of competition will be created under the bill, and the conveyance of traffic between the metropolis and Worcester cannot be assumed to belong to the petitioners in any such sense as gives them a right to be heard; (3) they allege that in two other pending bills powers over their lines are sought for the promoters, and for all persons using their respective undertakings, and that if such powers are granted, the companies scheduled to the present bill may exercise those powers; but these are matters to be discussed upon the two bills in question and not upon the present bill, which interferes with no property, right, or privileges of petitioners, and assumes no power over their undertaking.

Pope, Q.C. (for the North Western company): The avowed object of the bill is to constitute a through route from London into Worcestershire, the effect of which will be to enable the Metropolitan company to run from Moorgate Street to Fenny Compton. We own a line between London and the very places with which the bill will establish a competitive route. Among the railway companies to whom mutual running powers are given is any company which may obtain statutory powers "to connect the Aylesbury and Buckingham railway with the East and West junction railway, or with the Northampton and Banbury junction railway." These words were meant to cover the Buckinghamshire and Northamptonshire line which has just been thrown out by a Committee; and they will cover such a line if it should be sanctioned in any future session. For purposes of *locus standi* I am entitled to deal with the bill as if it were still a scheme before Parliament. By its means the Metropolitan might run over this competing route to Blisworth, and so compete with us. True, the middle link is struck out, but only for the present. It is an ingenious way of establishing a competing route to come to Parliament for lines bit by bit, and then promote a bill enabling a large company to run over the whole. We now have statutory powers to make working agreements with several of the scheduled companies; and the East and West junction company is now in Parliament seeking

power to construct a line connected with our system at Blisworth, and to take running powers over our system not only to Northampton but to Wellingborough. I do not say that under this section the Metropolitan company will have the user which the East and West junction company would thus acquire; but we have a right to be heard in order to see that no such user is given, for otherwise the Metropolitan might in this indirect way be authorised to run over our line in competition with ourselves. (*Bucks and Northampton Railway Bill, Petition of Great Western Railway Company; ante 146.*)

Sir Mordaunt Wells (for promoters): No competition is created by this bill. What is proposed is a mere increase of competition, which gives no right to a *locus standi*. Parliament created the competition when it sanctioned the lines of the scheduled companies. The bill merely authorises the companies to make arrangements *inter se*.

Mr. RICKARDS: The question is, whether a bill allowing several distinct undertakings to be used continuously and to be worked under one united management, does not make the railway so constituted a competing line, which it was not before?

Wells: Parliament has sanctioned the construction of these continuous lines, and the mere circumstance that the companies now wish to agree among themselves as to the most convenient mode of working does not create a new competition.

Mr. RICKARDS: Does not such a bill very much alter the position of these undertakings towards another company whose system runs between the same extreme points? You are welding separate links into one continuous chain.

Wells: The Great Western company have as much ground to complain of new competition as the London and North Western, but there is not a word on the subject in their petition.

Pope: If they do not choose to allege competition, that is nothing to us.

Wells: The scheduled companies have a perfect right to enter into these reciprocal running powers, independently of the bill.

Mr. RICKARDS: The bill sanctions a continuous railway communication from London to the extreme point reached by the scheduled railways, and this is a very different thing from the power now possessed by these companies separately.

Wells: Nothing will be done under the bill which might not be done under the general law; and the North Western company have no right to be heard against traffic arrangements made for the convenience of the public, and for the convenience of these companies. The time for the North Western company to have complained of competition was when Parliament was asked to sanction the construction of these continuous lines.

Mr. RICKARDS: I think it is in vain to contend that the use to which these lines are to be put, under one "united management," will not be different in character from the present use of these lines, and that a railway company with which the continuous system will compete has not a *locus standi*.

Locus standi Allowed.

Agent for London and North Western Railway Company, Roberts.

Petition of (3) METROPOLITAN INNER CIRCLE COMPLETION RAILWAY COMPANY.

Railway—Extension of Time—Injury arising from—To another Uncompleted Line—Junction—Traffic Depending on Line to be Completed—Authorised Line—Capital not Subscribed—Land unbought—Works not Begun—Bare Statutory Right of Constructing Line.

The bill proposed, *inter alia*, to extend for two years, from August, 1875, to August, 1877, the period for constructing part of the Metropolitan railway between Liverpool Street and Aldgate. The petitioners alleged that as their line, authorised in 1874, was to form a junction with the Metropolitan railway midway between these points, the effect of the bill would be to postpone the completion of their system, and to deprive them for a time of a large part of the traffic upon which they depended. The delay was further injurious to them as they had been bound down in their Act to construct their works simultaneously from both ends, *i.e.*, from the junction with the Metropolitan and with the Metropolitan District railways. It was objected that they had not subscribed the requisite capital, nor bought the land, nor begun the works for the authorised line, and that the bare possession of a statutory right to construct the line and make a junction with the promoters' system did not entitle them to oppose the bill:

Held, that the right of the petitioners to a *locus standi* was not affected by their failure as yet to exercise their statutory powers, they still having two years within which to exercise those powers; and that, as the traffic and profits of their authorised line depended largely upon the completion of the promoters' railway, they were entitled to oppose such clauses and parts of the preamble as related to the extension of time for completing the railway.

The *locus standi* of the petitioners was objected to, because (1, 2, and 3) no right of theirs is interfered with; and (4) the right of the promoters to construct a station at Aldgate,

of which they complain, was vested in the promoters long after the petitioners obtained their Act in 1874. Practically, they contend that so much of the Metropolitan railway shall be abandoned as lies eastward of the proposed junction therewith of the petitioners' line, but they can have no right to a hearing on this matter.

Pembroke Stephens (for petitioners): Our Act was obtained under the *bona fide* belief that the Metropolitan company intended to complete their Extension railway within the period limited by their Act, *i.e.*, August 1st, 1875, but they now seek to extend that time for two years, keeping alive their powers for extending their line to Aldgate, with the obvious intention of competing with us at that point for an important portion of the city traffic. No necessity is alleged for the postponement, and we say that if the bill passes, the promoters should be required to complete, not later than August, 1876, that part of their Extension railway which will form part of the Inner Circle in connection with our line. When our bill was before Parliament, the promoters procured the insertion of a clause binding us to construct our line from both ends simultaneously, so as to give no advantage to the District railway over them. We naturally assumed that in 1875 the Extension, from which they thus bound us to commence our works, would be completed, and our preamble recited that such completion was "a matter of public importance." This line being vital to our own, as one of the sources from which we are to derive traffic, any delay in its construction intimately affects us.

Mr. RICKARDS: You want to go before the Committee not to object to an extension of time, but to oppose an extension for too long a period?

Stephens: Yea. We do not want an indefinite postponement; and if we are not heard, you virtually sanction the principle that the completion of the Inner Circle may be indefinitely postponed at the instance of the Metropolitan company, without opposition, though our line was authorised in 1874 for the purpose of completing the Inner Circle.

Sir Mordaunt Wells (for promoters): The petitioners could not oppose this bill if we were seeking to abandon the line, nor does the mere fact that they have obtained an Act of Parliament enable them to oppose it. They have the right to make a railway and to form a junction with our line, but there is no instance in which a railway, with a mere Act of Parliament, not having taken any steps to raise capital, or acquire the land, or construct their works, have been heard against an extension of time asked for by another railway company.

Mr. RICKARDS: The petitioners say that certain powers and rights have been conferred upon them, and that the exercise of these powers and the enjoyment of these rights may be affected by your extension of time. They are not obliged to show that they have raised capital.

Wells: They must do certain things before they can oppose such an application as this.

Mr. RICKARDS: They have two years within which to exercise their powers.

Wells: In the exercise of your discretion you will look at the position of the Metropolitan company and of the petitioners. We are an old company and have purchased the land, and the time we ask for the completion of our works, till 1877, is no longer than the petitioners themselves ask for the completion of their new line. No injury, therefore, will be inflicted upon this company by the proposed extension of time.

Mr. BONHAM-CARTER: Can you refer us to any case in which an authorised railway has been excluded from a hearing on the ground that it has done nothing?

Wells: I find no case in which this point has been raised, though the principle of the *Pontefract* case (*post*, 183) ought to govern this. Surely a company cannot appear here in virtue of a bare right conferred upon them to construct a line, they having done nothing towards constructing it.

Mr. RICKARDS: They are not bound to do anything except within the statutory time, two years of which are unexpired. They have these powers, and can exercise them; but they say, "Our powers are useless till your line is completed. Our profits and our very existence depend on you, and, therefore, it is material to us that we should bind you to complete your line within a limited time, and we ought to be parties to any discussion as to the conditions to be imposed upon you in this respect." You seek to extend the time for two years. Are not the petitioners to be heard to suggest that this period should be limited to two years, considering how much their existence is bound up in yours?

Wells: If admitted, the *locus standi* of the petitioners should be limited to this one point.

The CHAIRMAN: Their *locus standi* will be *Allowed* against Clauses 4, 5, and 6 (extension of time and penalty clauses), and so much of the preamble as relates thereto.

Agents for Bill, Dyson & Co.

Agent for Petitioners, Raes.

NORTH EASTERN RAILWAY BILL.

Petition of NORTH SHIELDS WATER COMPANY.

4th March, 1875.—(*Before* Mr. CECIL RAIKES, M.P., Chairman of Ways and Means, in the Chair; Mr. PEMBERTON, M.P.; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Water Company—Construction of New Lines—Power to lay Pipes—Interference with by Railway—Embankment—Water Pipes Crossing.

A water company had power under an old Act to dig and break up the soil and search for springs within a certain district, and after-

wards to conduct the water so collected to N. S. for the supply of the inhabitants. A railway company promoted a bill for the construction of lines within the district over which these powers extended. The water company had no pipes upon the route traversed by the new lines, but alleged that if they should think fit to exercise their statutory powers at this point, the construction of these lines might interfere with the laying of pipes, or the making of works:

Held, that the petitioners had no such interests in the land to be taken for the purposes of the railways as entitled them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) the power vested in the petitioners does not constitute such a right or interest in the lands or waters referred to by them as gives them a *locus standi*; (3) the petition discloses no ground for a hearing consistently with practice.

Coates, Parliamentary Agent (for petitioners): The bill authorises the promoters to construct two railways, Nos. 3 and 4, in the parish of Tynemouth. Under an old Act (26 Geo. III., c. 110) we have power to sink shafts and dig wells within any portion of the manors of Tynemouth or Tynemouthshire, and both railways are to be constructed within these limits. The section giving us this power provides that we may enter into and upon any lands belonging to the Duke of Northumberland within the limits specified "and dig and break up the soil, search for any springs of water," and convey such water into the town of North Shields, "and for that purpose make any cuts, trenches, and water-courses," &c., as we may think necessary. We are afraid that the proposed railways will be made on an embankment across the land under which we shall have to lay our pipes. It is true that our pipes are not now laid there, but when the neighbouring land is covered with buildings, as it will be, we must supply the population, and could only do so by passing our pipes under or over the railway. Under these circumstances we think we are entitled to go before the Committee and ask for protection, as our right to lay pipes and make works for supplying the district may be hindered or obstructed by the railways now proposed. We intend to construct works for the supply of the district which will be developed by the new lines.

Mr. RICKARDS: Then if anyone proposes to erect any structure whatever, you may say that it may interfere with the exercise of your powers?

Coates: We do not wish to prohibit or obstruct; we only want our rights reserved.

Bidder, Q.C. (for promoters), was not called on to reply.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

ORWELL RAILWAY AND PIER BILL.

15th March, 1875.—(Before Sir JOHN ST. AUBYN, M.P., in the Chair; Mr. PEMBERTON, M.P.; and Mr. RICKARDS.)

Petition of SIR GEORGE BROKE-MIDDLETON, BART., AND JANE ANN BROKE.

Railway—Landowner—Land not Affected—Technical Locus Standi—Schemes Inter-dependent—Identical Route in Part—S. O. 92 (Chairman may Report Special Circumstances, &c.)—Chairman of Ways and Means—Powers of, on Unopposed Bills—Special Decision by Court—Recommendation to Chairman of Ways and Means—Reference to Committee.

A bill was promoted for the construction of a line from F. passing through a certain estate on its way to the town of I. A landowner petitioned against this bill, and his *locus standi* was admitted. In a second bill the same promoters proposed the identical line starting from F., but stopping short of the point where it would touch any portion of his estate. The landowner petitioned in like manner against the second bill, alleging that though his property was not touched, the question of the construction of the entire line would be prejudged in a future Parliament if the fragmentary portion now proposed were authorised:

Held, that the petitioner, not being, on the face of the bill, injuriously affected in his property or interests, had no *locus standi* against it; but the Court undertook to recommend to the Chairman of Ways and Means that the two bills should be referred to the same Committee, and there treated as one scheme.

The *locus standi* of the petitioners was objected to, because (1) the bill does not take, use, or affect compulsorily any land, house, or property of theirs; (2) the petition does not allege or show that any right or interest of theirs will be affected, or that they have any such interest in the objects and provisions of the bill as entitle them to be heard against it; (3) even if any lands or property of theirs were injuriously affected, the petitioners would not

be entitled to a *locus standi*; but the contrary is the fact, since the petition admits that the proposed railway and works will stop short of their property; (4) they allege that they apprehend injury under the Felixstowe railway and pier bill, but they have petitioned, and their *locus standi* is admitted against that bill, and it is contrary to practice to grant to petitioners against a bill a *locus standi* which they would not otherwise possess, merely because they happen to be opposing in the same session another and distinct bill.

Cripps, Q.C. (for petitioners): The pier and railway proposed by this bill are identical with the pier and railway proposed by an alternative bill of the promoters called the Felixstowe Railway and Pier Bill. In this bill, however, the line stops at Levington; in the alternative bill, it is carried through the petitioner's property on to Ipswich. The present bill, therefore, does not touch our land, but the object of the promoters evidently is, if Sir George Broke-Middleton should succeed in throwing out the other bill, to pass this as an unopposed bill, so that next year they may come to Parliament and say, "this line was evidently intended to be continued on to Ipswich." Thus the question will be prejudged when it comes before Parliament in a future session. Last year the line as a whole was rejected upon our opposition. By itself the fragment is entirely useless. The pier with which it proposes a connection has not yet been constructed, and it terminates in a field at a spot where there is absolutely no population. To shut us out would surely be unjust, because the effect of sanctioning this line, though it does not touch Sir G. Broke-Middleton's property, would be to cause him as great an injury in the end as if the line intersecting his property had been sanctioned in the first instance.

Mr. RICKARDS: Suppose the scheme were comprised in one bill, but upon his opposition as a landowner the promoters were to say in Committee, "we abandon the part which goes through your property," would not the bill then become an unopposed bill in Committee, and could the petitioner then, according to practice, offer any further opposition?

Cripps: I think he could; he would have a *locus standi* against the whole scheme in all its stages.

Mr. RICKARDS: It is not indispensable that the line should be carried through Sir J. Broke-Middleton's property; it might go round?

Cripps: Yes; that is why the question should be tried as a whole.

Mr. RICKARDS: The two bills will no doubt go before the same Committee. If so, what do you gain by having a *locus standi* against this bill, if you appear against the other?

Cripps: The other bill might be thrown out and this one passed as an unopposed bill. This bill will give the promoters a larger instalment towards their line, and will, therefore, prejudice the question behind my back.

Mr. RICKARDS: Under S. O. 92, the chairman of Ways and Means may report to the House that in his opinion any unopposed bill should be treated as opposed.

Cripps: If I had no *locus standi*, I should not be heard against that unopposed bill.

Mr. RICKARDS: It is very unlikely that you would fail in making your opposition effectual if both bills were considered by the same Committee, because they would form the same case.

Cripps: That is a good reason for allowing me a *locus standi*, if you think it right that I should be before the Committee.

Mr. RICKARDS: The question is whether, technically, we can give you a *locus standi*.

Cripps: I apprehend you have an absolute discretion to admit me, if you think it would be unjust to exclude me, under the peculiar circumstances of the case.

Pembroke Stephens (for promoters): The bill does not affect the petitioner's property in any way, and if this were the only scheme before Parliament, it might pass as an unopposed bill, for he would clearly have no *locus* to resist it. Against the other bill he will be heard for his own protection; and if he throws out the other scheme, and then, according to his complaint, this passes as an unopposed bill, he still cannot be prejudiced; for, supposing hereafter we propose to extend our line, he will be heard against that extension if it touches his land, and will be able to repeat his present suggestion of a deviation line that might go round and avoid his property. (*Great Western Railway Bill, petition of Glyncoirwg Colliery Company. 2 Cliff. & Steph. 288.*)

Mr. RICKARDS: Why do you promote two bills for the same line instead of one?

Stephens: We think the longer line the right one. But if Parliament rejects our longer line, the shorter line enables us to carry out the petitioner's suggestion. There would be grave difficulties in allowing a *locus standi* to a petitioner, not because he was really affected by the bill, but because he happened also to petition against another bill, in respect of which his *locus standi* was admitted.

The CHAIRMAN (after deliberation): The *locus standi* of Sir George Broke-Middleton is *Disallowed*. But the Referees will communicate with the chairman of Ways and Means, with the view of recommending him, if he sees his way to do so, to send this bill and the alternative bill to the same Committee.

Locus standi Disallowed.

Agent for Bill, Sharkey.

Agents for Petitioners, Grahames & Wardlaw.

PETERBOROUGH WATER BILL.

Petition of CORPORATION AND RATEPAYERS OF PETERBOROUGH.

7th April, 1875.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Water Company—Bill for Supply of Borough—Amended Bill—Formal Locus Standi Against—Abandonment of Municipal Limits—Outside District Retained in Bill—Corporation—Contemplating Water Supply—Not Promoting Bill—Borough Funds' Act, 1872—Injunction Under—Poll of Owners, &c.—Same Source of Supply—Competition—Possible Future—Joint Petition—Ratepayers—No Allegations by—Opposition to Bill by Municipality—Application of Corporate Funds Conditionally Restrained—Corporate Seal—Authority to Affix—Town Clerk—Distinct Interest—Joint Petitioners—Not Distinguished by Court.

A bill for the supply of Peterborough and its vicinity with water was opposed by the corporation, who themselves were contemplating the supply of the town with water. With this object they had employed an engineer, who reported in favour of two sources of supply, recommending borings at Castor, and, these failing, resort to a stream at Braceborough, about 12 miles from the town. Meanwhile, the bill, promoted by private persons to incorporate a company for the supply of Peterborough, and some small villages outside the town, proposed to appropriate the Braceborough source. The bill was opposed by the corporation and ratepayers, upon a joint petition, but the promoters dropped the powers enabling them to supply Peterborough, and thereupon asked that the petitioners should receive only a formal *locus standi* for the purpose of seeing those powers struck out in Committee. On the other hand, the petitioners asked for a general *locus standi*, on the ground that the company were proposing to take a source of supply which might be necessary for the town, and were so appropriating it, not with any *bona fide* object, but in order to block any future scheme by the corporation, and with the view of being bought out. The petitioners also alleged competition, inasmuch as the company, stopping short at the municipal boundary, would be able that point to supply water in bulk to the railway company, the largest consumers in the town. There were technical objections to the *locus standi* of the corporation, but these were not argued:

Held, that as the corporation were promoting no rival bill, and had done nothing to appropriate the Braceborough source beyond receiving the report of an engineer respect-

ing it, they could not be heard to claim such source of supply, and could not oppose the bill on the ground of a possible future competition. *Locus standi* limited, therefore, to those parts of the bill affecting the district within the municipal jurisdiction.*

It was objected by the promoters that the petitioning ratepayers showed no distinct interest, and, indeed, that no allusion was made to them either in the petition or in argument:

Held, that the petition must be treated as one, and the *locus standi* of ratepayers thus signing the corporation petition was therefore allowed, limited as in the case of the corporation.

* The formal decision of the Court appeared in the votes thus:—

“OFFICE OF REFEREES.

“WEDNESDAY, 7TH APRIL, 1875.

“The *locus standi* of the following Petitioners has been Disallowed:—

| Name of Bill. | Name of Petition. |
|---------------------|--|
| Peterborough Water. | Corporation and Ratepayers of Peterborough, except as against so much of the Bill as affects the district within the jurisdiction of the Mayor, Aldermen, and Burgesses of Peterborough. |

In Committee upon this bill, on Thursday, April 8 (Mr. BAILLIE COCHRANE, Chairman), the case was opened by *Littler*, Q.C., virtually as an unopposed bill, and a hearing was sought by *Shiress Will* for the petitioners, on grounds similar to those ineffectually urged above. *Littler*, Q.C. (*Pembroke Stephens* with him) resisted the application, arguing that it was the special province of the Referees to decide on the rights of petitioners to be heard, that they had by their decision fixed the limits to which the petitioners could go in this case, and that there no longer remained anything in the filled-up bill on which the petitioners could be heard. *Shiress Will* replied that, in spite of the omissions, the bill was either a “Peterborough Water Bill,” or nothing. The Committee, requiring to be satisfied, apart from the functions of the Referees, that the bill was a proper one for them to pass, and holding that the bill and the parties were both before them, called on the promoters to proceed: and in the end, the preamble was declared not to have been proved to their satisfaction.

The *locus standi* of the petitioners was objected to, because (1) neither the corporation nor the ratepayers are entitled to appear according to practice; (2) the corporation did not obtain the consent of owners and ratepayers to petition under the Borough Funds’ Act, 1872. At a public meeting, convened with the object of obtaining such consent, a poll was legally demanded, but refused by the mayor, until an injunction was obtained, restraining the corporation from applying any corporate funds in opposing the bill until such poll was taken. The petition does not state that it was adopted at any meeting of the corporation, or sealed on their behalf or by their authority, but only that the corporation seal was affixed to it “in the presence of the town clerk;” (3) the petitioners do not allege that under the bill any rates will be levied upon the borough or any of the petitioners, or that their lands will be taken or injuriously affected; (4) the bill will not affect or prevent the borings for water which the corporation allege that they are carrying on at Castor; (5 & 6) the petitioning ratepayers, being only 124 in number out of a population of about 20,000, cannot be heard jointly with what purports to be the body representing the ratepayers; and if heard apart from the corporation, they must show a distinct interest, which they do not allege. On the contrary, the ratepayers are nowhere mentioned throughout the petition.

Shiress Will (for petitioners): The corporation, who are the water authority of the city, intend applying for power to construct water-works of their own, and do not desire to have the promoters interfering with them.

Pembroke Stephens (for promoters): Notice has been given to the petitioners that Peterborough will be struck out of the bill.

Will: That concedes our *locus standi*.

The CHAIRMAN: Against so much of the bill as relates to Peterborough. If that portion of the bill is omitted, there will be an end to your opposition.

Will: We ask for a general *locus standi*, because the engineer whom we have employed to report upon the best source of water supply recommends us to try the Castor source first, and then, as an alternative source, Braceborough. But the promoters go to Braceborough.

Mr. RICKARDS: At present, it is only an idea on the part of the corporation.

Will: It is a little more, because our engineer has reported upon the Braceborough source, and if the Castor scheme should fail we must go to Braceborough. If Peterborough should be struck out of the bill, the promoters will only be able to supply a few small villages which require no water service; but they will monopolise the source, and the manifest object of the bill is to force us to buy them out at their own price. We ask for a general *locus standi* on this and on another ground—because the promoters, stopping at the municipal boundary, will be able to supply the railway company who otherwise would be our largest consumers. This is competition—at least there is a certainty of competition within a very short time, for the scheme of the corporation will soon be carried out, and borings are being actively made. It was only when we

fixed upon Braceborough as an alternative source that the promoters, who are entirely unconnected with our district, came down and adopted this source.

Stephens: We do not admit that.

The CHAIRMAN: The corporation have not yet gone so far as to determine which they will prefer—the Braceborough or the Castor source; and they have done nothing, except at Castor, and there have only had borings.

Will: We have surveyed both places, and, in pursuance of our engineer's report, are trying the Castor source first.

Stephens (in reply): The amended bill will exclude every portion of the jurisdiction of the corporation; and that being so, their *locus standi*, as when running powers are struck out of a railway bill, will be gone when the bill is amended. (*Neath and Brecon Railway Bill*, 1 Cliff. & Steph. 109.) But, as the petitioners are anxious to go on fighting, notwithstanding the alteration of the bill, I ask the Court to bear this fact in mind when framing their decision.

The CHAIRMAN: The *locus standi* of the Corporation of Peterborough is *Allowed* against so much of the bill as affects the district within the jurisdiction of the mayor, aldermen, and burgesses of Peterborough.

Mr. RICKARDS: Technically the Petitioners will be *Disallowed*, except as to so much of the bill as you have struck out.

Stephens: As regards the petitioning rate-payers, there is no allegation concerning them in the petition, nor has their case been argued.

Will: Their case is one with the corporation.

Mr. RICKARDS: We treat the petitions as one petition.

Agents for Bill, *Dickson & Co.*

Agents for Petitioners, *Speechly & Co.*

PIER AND HARBOUR ORDERS CONFIRMATION, No. 2, BILL (CARLINGFORD LOUGH).

30th April, 1875.—(Before Mr. PEMBERTON, M.P., in the chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Petition of (1) MASTERS AND OWNERS OF VESSELS TRADING TO AND FROM THE PORT OF NEWRY; (2) FRANCIS CARVILL AND SON, MERCHANTS, SHIPOWNERS, AND REGISTERED ELECTORS OF THE TOWN OF NEWRY; AND (3) GEORGE GUY, & Co.

Harbour Bill—Harbour Dues—Exemptions From—Abolished by Bill—Provisional Order—Ship-owners, Merchants, Traders—Town Commissioners—Navigation Commissioners—Steam-packet Company—Representation—Distinct Interest—Single Traders—Practice—Informal Petition—Signatures not Appended to—Written on Separate Sheet—Signature by Clerk Unauthorised—S. O. 131 (Preparation and Signature of Petition).

The Carlingford Lough improvement commissioners, a statutory body composed of representatives nominated by the town commissioners of Newry, the navigation commissioners, and of other members, promoted a Provisional Order for deepening the harbour of Newry and discontinuing certain rating exemptions which, as the promoters alleged, had operated unfairly. The bill was opposed by the town commissioners, the navigation commissioners, and a steam-packet company, interested in the trade of Newry, and their *locus standi* was conceded; but three other petitions were presented (1) by masters and owners of vessels trading to the port; (2) by a single firm of timber merchants, who represented two-thirds of the import timber trade of Newry; and (3) by a London firm engaged in the trade of Newry. All the petitioners resisted the abolition of the exemptions, and alleged that they would thereby be injuriously affected. It appeared that the petition (1) was informal, no signatures being attached to the sheet on which the petition was written except the signature of a clerk, who, on depositing the petition was told of the informality, and endeavoured to cure it by affixing his own name in the proper place. On the part of the promoters, the answer to all three sets of petitioners was that they were represented by the bodies who had already petitioned:

Held, that petitioners (1) and (3) had no *locus standi*; but as the single firm of merchants were substantial representatives of the trade, and were not necessarily represented in their private interests as traders by the town or navigation commissioners, they were entitled to be heard against the discontinuance of the exemptions which they now enjoyed.

The *locus standi* of (1) masters and owners, &c., was objected to, because (1) the petition is irregular and informal, as there is no signature upon the same sheet or skin upon which the petition or the prayer thereof is written; (2) the signatures are upon separate sheets, and there is nothing to show that the alleged petitioners signed the petition; (3) should the petition be received, the petitioners possess no right, property, or interest entitling them to be heard; (4) they do not represent the owners and masters trading to and from the port of Newry, who are represented by the Newry town commissioners, the Newry navigation company, and the Dundalk and Newry steam-packet company,

who petition against the bill, and whose *locus standi* is not objected to; (5) the petitioners cannot appear according to practice.

The *locus standi* of Francis Carvill and Sons was objected to, because (1) they allege that they have property in Newry, but none of it will be taken under the proposed order; (2) as merchants and shipowners, they have no interest in such order entitling them to be heard; (3) they are a single firm petitioning on behalf of their individual rights, and do not represent any class; (4) the merchants, shipowners, and registered electors of Newry are represented by the town commissioners, the navigation company, and the Dundalk and Newry steam-packet company; (5) the petitioners are not injuriously affected, and cannot be heard consistently with practice.

The *locus standi* of George Guy and company, who were timber merchants and shipowners in London, importing wood to Newry among other places, was objected to on similar grounds.

Mr. Carvill (for petitioners 1 and 2): I am the leading member of the firm of Carvill and Son, and also sign petition (1). We have laid out £30,000 upon our establishments at Newry, on the faith that the harbour would be free; but the Carlingford Lough improvement commissioners, who promote the bill, now propose to levy dues where none now exist, in order to defray the cost of works designed, as we say, not for the benefit of traders at Newry, but of the London and North Western railway company. It is impossible that the dues on entering the harbour can be increased without depreciating our property. When the question came before the Board of Trade, it was decided that certain ships, not deriving any benefit from the new cut, should be free from taxation; but the bill proposes to abolish this exemption, and we ask to go before the Committee to contend that the exemption should be continued. We import timber into Newry in our own ships. For the last three or four years we have imported an average of 12,000 tons a year, representing £100,000 worth of timber. We have 20 ships engaged in this trade, and are the principal shipowners, our trade representing two-thirds of the import timber trade; but the other shipowners entertain the same views. As regards the technical objection to petition (1), it is true that the signatures are on a detached sheet, but when the petition was deposited, my clerk, being told of the omission, affixed his signature to the sheet on which the petition is written. I did not give him special authority to sign for me, but told him to do all that was needful in presenting the petition. Practically our purpose will be served if we are allowed to appear on either petition.

Mr. Guy (for Messrs. Guy and Company): Our firm has been connected with the trade of Newry since 1815. In 1871 we removed our offices from Newry to London, but we have extensive timber yards in Newry and large saw-mills, and we carry on a large trade there.

The CHAIRMAN: The question is whether you are not represented by the town commissioners.

Mr. RICKARDS: You are only here as a landowner. Your property contributes to the town

rates, which are levied by the town commissioners.

Mr. Guy: I am also a trader and shipowner, and none of the other bodies opposing the bill are in the same position as I am. They may make other arrangements which may not satisfy me.

Pembroke Stephens (for promoters): The Carlingford Lough commissioners, who promote the Provisional Order, are a representative body, its members being nominated by the town commissioners, the navigation commissioners, the two railway companies, the Board of Trade, and representatives of different local interests. The town and navigation commissioners, with the Dundalk and Newry steam-packet company petition, and we concede their *locus standi*. They will raise all the questions raised in these petitions.

Mr. RICKARDS: They do not necessarily represent the same interest as Mr. Carvill's.

Stephens: As an owner of property and a registered elector in Newry, Mr. Carvill is represented by the town commissioners, and his interests are also identical with the navigation commissioners, who, as he himself says in his petition, control the navigation of the port.

Mr. RICKARDS: The navigation commissioners have a general interest in the port, but Messrs. Carvill have a distinct interest in the continuance of the exemptions which they now enjoy.

Stephens: They have no special interest, and there is no special exemption of which they will be deprived. Petition (1) is obviously informal, being only signed in the proper place by Mr. Carvill's clerk, whereas (May, 7th ed., p. 545) every petition must be signed by the parties and no one else, except in case of incapacity from sickness; and S. O. 131 further sets forth that the petition must be prepared and signed in strict conformity with the rules of the House. If Mr. Carvill represents, as he says, two-thirds of the import timber trade, there must be very little left for Mr. Guy. [*He was then stopped.*]

The CHAIRMAN: The *locus standi* of Trustees and Owners of vessels (petition 1) is *Disallowed*. The *locus standi* of Messrs. Carvill (petition 2) is *Allowed*. The *locus standi* of Messrs. Guy and Company (petition 3) is *Disallowed*.

Agents for Bill, Martin & Leslie.

PLYMOUTH, DEVONPORT, AND STONEHOUSE CEMETERY BILL.

Petition of CORPORATION OF PLYMOUTH.
3rd March, 1875.—(Before Sir J. ST. AUBYN, M.P., in the chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Cemetery Company—Enlargement of Cemetery—Application of Loan Capital previously authorised—Municipal Corporation—Urban Sanitary Authority—Cemetery Clauses' Act—Cemetery Company Incorporated before Passing of—No Restrictions upon—Virtual Monopoly—Injury to Inhabitants by Increased Powers—

*Maximum Charges—Limitation of Dividend—
Attempt by Corporation to Fix—Burial Regula-
tions—Existing Legislation, Complaint of.*

In 1846 an Act was passed, incorporating a cemetery company at Plymouth, who constructed a cemetery in pursuance of powers then granted to them, and now promoted a bill for the enlargement of the cemetery and the application to this purpose of money which they were authorised to borrow under their original Act. The corporation of Plymouth petitioned, and alleged that, as the company were incorporated before the passing of the Cemetery Clauses' Act, they were subject to no statutory restrictions as to rates, dividend, or otherwise, and that as they now proposed to increase their powers, they ought to be put under such restrictions:

Held, that as the virtual monopoly alleged did not arise under the bill, which proposed no change in existing rates, &c., the petitioners were really complaining of past legislation, and were not entitled to a *locus standi*.

(*Per Cur.*) If it were sufficient for petitioners to say—"The existing Acts, under which the company work, are imperfect, and we propose to improve them," any representative body might at any time get a *locus standi*, because they might always allege that existing legislation was capable of being improved.

The *locus standi* of the petitioners was objected to, because (1) they do not as the urban sanitary authority allege, nor is it the fact, that the town or inhabitants will be injuriously affected by the bill; (2) neither the present cemetery nor the proposed enlargement is within the petitioners' district, and they have no such interest in its control, management, or regulation as entitles them to be heard; (3) the promoters are already subject to all such legislative restrictions and enactments as are usual and proper with reference to cemetery companies, and the bill does not propose to relax, alter, or interfere with any such restrictions or enactments; (4) the virtual monopoly which, as the petitioners allege, the promoters practically enjoy, does not arise under and is not increased or altered by the bill, nor if it existed, which the promoters do not admit, would it be of such a character as to confer upon the petitioners any right to be heard; (5) they have no interest in the bill entitling them to be heard.

Ball, Parliamentary Agent (for petitioners): The company were incorporated in 1846, and as they possess a virtual monopoly of interments within the district, owing to the restrictions

placed upon interments in the parochial and other burial grounds there, we submit that the same principle should be applied to them which the Legislature applies to other public companies whose undertakings also partake of the character of a monopoly. Instead of being under legislative control, like railway, dock, gas, or water companies, the promoters are under no limitations whatever as to their rates of charge for interments, or as to the profits of their undertaking, or the regulations for conducting interment, or for admitting persons to visit the graves. The petitioners proposed to the company that, in the bill, they should schedule a table of maximum charges, fix the maximum dividend at 10 per cent., and from time to time submit their regulations for approval to the Local Government Board. The company, however, refused to accede to any of these requirements. As to objection (1) it is true that we do not say in so many words that the bill injuriously affects us, but substantially our petition does raise this issue. Then the promoters say that we have no interest in the management or regulation of the cemetery, but the obvious answer is that we represent the inhabitants of Plymouth, 70,000 in number, and that the cemetery is adjacent to the borough. Being incorporated before the passing of the Cemeteries Clauses' Act, the company are not subject to its provisions, nor do they now propose to incorporate it. They are not, therefore, as they allege, subject to such legislative restrictions as are usual and proper in the case of cemetery companies. Even if they were, that would be no answer to our claims to a *locus standi*, for corporations are usually heard against water and gas companies, notwithstanding that they incorporate the General Acts. As to the other objections, that the bill does not increase or alter the existing monopoly, it is clear that if the powers of the company are increased, their monopoly is increased also. The enlargement of the cemetery, and the proposed application of further moneys for that purpose, constitute such an increase of powers.

Mr. RICKARDS: Would the inhabitants of Plymouth, whom the corporation represents, be worse off if this bill were to pass than they now are? The first principle of *locus standi* is that petitioners should show that the bill contains something which would injuriously affect their interests. If it were sufficient for you to say, "The existing Acts, under which the company work, are imperfect, and we propose to improve them," any representative body might at any time get a *locus standi*, because they might always allege that existing legislation was capable of being improved.

Ball: We are injured by the proposed increase of powers, and as a public body deeply interested in the proceedings of this company, we say that Parliament should accompany these new powers by reasonable restrictions.

Mr. RICKARDS: You want to make this increased power a pretext for asking for an alteration in existing legislation?

Ball: Not quite so. We say that the company now possess a monopoly which the bill will increase.

Mr. RICKARDS: You must show how the increased monopoly will injure you?

Ball: The present monopoly is injurious to the town; and if the monopoly is increased, the injury will be increased.

Pember, Q.C. (for promoters), was not called on.

Locus standi Disallowed.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Toogood & Ball.

PONTEFRACT BOROUGH EXTENSION BILL.

Petitions of (1) LANCASHIRE AND YORKSHIRE RAILWAY COMPANY; (2) MIDLAND AND NORTH EASTERN RAILWAY COMPANIES; AND (3) JOHN RHODES.

15th March, 1876.—(Before Sir J. ST. AUBYN, M.P., Chairman; Mr. PEMBERTON, M.P.; and Mr. RICKARDS.)

Borough—Extension of—Railway Companies—As Landowners—Outside Municipal Limits—Liability to New Rates—Property depreciated by—Exemption of Three fourths—Local Sanitary Authorities—Rural and Urban—Borough Rates—Authorised Line, not made—Railway Rating—Compulsory Powers over Land—Vendors and Purchasers—Rights of, to appear—Rates, influence of—On Price of Land—Landowner—Mineral Rights—Collieries—District included in Municipality—No benefit to—New Burdens—Local Authorities—Ratepayers—Representation—Distinct Interest—Railway Stations and Buildings—Exemption of—From Municipal Building Restrictions—Practice—Same Petitioner Signing two Petitions—May be heard on both—Advantage to Petitioners under Bill—Pleaded as set off to Injury—Other Petitioners against Bill—Referred to in Argument—Grounds of Decision.

A bill promoted by the corporation of Pontefract to extend the boundaries of the borough was opposed (1 and 2) by railway companies, who complained, as landowners, that certain property of theirs, now outside the municipal limits, would, under the bill, be included within those limits, and thereby become liable to taxation from which it was now exempt. The same allegations were made by (3) a petitioning landowner, whose collieries and other property now outside the borough boundary would become subject to the same liability. It appeared that the railway companies (2) had obtained statutory authority to construct the line and stations in respect of which they petitioned, but had not yet constructed either, or given

the usual notices to treat under their compulsory powers:

Held, that these petitioners, not having acquired the land, had no *locus standi*, the proper parties to petition in respect of this land being the actual owners; but that, as petitioners (1 and 3) were owners having a distinct interest in resisting the imposition of new burdens, they were not necessarily represented by the local authorities of the districts to be annexed to the borough, and were entitled to be heard against the bill.

(*Per Cur.*) The argument that if petitioners are not admitted, other petitioners, alleged to represent them, may make terms with promoters and withdraw, applies to a great many cases, but does not suffice to give a *locus standi* to a petitioner who really has none upon merits.

(*Per Cur.*) There is no rule of practice preventing the same people from being heard upon two petitions; and it has been the practice of the Court in the argument upon one petition to allow a reference to other petitions against the same bill.

(*Per Cur.*) Advantages which petitioners may possibly derive under a bill cannot be pleaded as a set-off to their claim to a *locus standi* in respect of injury inflicted upon them by the bill.

(*Per Cur.*) If a landowner is going to be subjected to taxation which he has never paid before, the effect of which will be to make his land less valuable, he has a definite ground upon which he can claim a *locus standi* apart from the local authority.

The *locus standi* of the Lancashire and Yorkshire railway company was objected to, because (1) they have no special interest beyond that of other ratepayers in the districts proposed to be included in the borough, and the local authorities of such districts are the proper parties to be heard; (2) the clauses relating to purchase of the gasworks and further borrowing powers will be struck out of the bill.

The *locus standi* of the Midland and North Eastern railway companies was objected to, because (1 and 2) they do not distinctly specify the grounds on which they object to the bill, and do not allege any interest in the detached portions of the township which are to be annexed to the borough: they are therefore not entitled to be heard upon a general statement that the extension of the borough to such places is uncalled for; (3) they have no distinct interests, and are represented by the local authorities; (4) the promoters do not seek by this bill to obtain any further powers of rating railway property within the

borough than are now sanctioned by Parliament, and are in force generally in towns and boroughs throughout the kingdom; (5) the promoters do not seek for any new powers as to the proper construction of buildings, and the petitioners are not entitled to seek for any exemption from the existing public law under this bill; (6) the bill has been approved by a meeting of ratepayers, convened under the Borough Funds' Act, and the petitioners, having no distinct interest, cannot be heard separately against the bill.

The *locus standi* of John Rhodes was objected to, because (1) the clauses relating to the purchase of the gasworks and further borrowing powers will be struck out of the bill; (2) he has no special grievance beyond that of any other ratepayer in the districts proposed to be included in the borough, and is represented by the local authorities of those districts.

Pope, Q.C. (for Lancashire and Yorkshire railway company): Some parts of our stations and property are already within the borough, and the bill will extend to other portions of our line the rating power exercised by the corporation. We petition as landowners, not as ratepayers, for under the bill our property will be subject to rating from which it is now exempt, and may be permanently injured in value through that increased rating. (*St. Helen's Borough Improvement Bill*, 1 Cliff. & Steph. 52.) As to the rural authorities in the outside district, they do not represent us on this question. We are in the position of owners whose land will be dealt with compulsorily under the bill and will be made liable to increased taxation, diminishing its permanent value.

Littler, Q.C. (for Midland and North Eastern railway companies): The only difference between our case and that of the Lancashire and Yorkshire is that we represent an authorised railway running through part of the lands proposed to be added to the borough, but we have not yet made our line.

Mr. RICKARDS: Have you got your land?

Littler: No; but we have power to take it, and shall be in possession of it by the time the bill comes into operation. Our Act was only obtained last year and we are now preparing to serve notices to treat.

Sir Mordaunt Wells (for promoters): You are not landowners.

Littler: We are bound to take the land, and are under penalty if we do not buy it and complete the line.

Mr. RICKARDS: You may prefer to pay the penalty instead of making the line.

Mr. PEMBERTON: The owners could not compel you to take the land?

Littler: No; but with two companies like the Midland and North Eastern, who not only have Parliamentary authority but are under Parliamentary obligations to make the line, it is not to be supposed that we shall not make it.

Mr. RICKARDS: Suppose the present owner of the land asked for a *locus standi*, I do not think we could refuse it.

Littler: The promoters might say that his interests were represented by the rural authorities, whereas we say that under the bill we shall lose the benefit which we should otherwise

enjoy of being rated to the extent of one-fourth only upon the new line.

Mr. PEMBERTON: As this bill will be passed before you buy the land, will not the liability of the land to new rates enter into the question of value?

Littler: It is highly improbable that any arbitrator or jury would reduce the price of the land on account of future rates.

Mr. RICKARDS: If the rates will not be considered, the whole ground for *locus standi* fails, because your allegation is that the bill will diminish the value of the land.

Littler: That is only one part of our grievance, because we should be rated not merely in respect of the land as a landowner would be rated, but in respect of the traffic that passes over our line. It is hard if we are excluded because we accidentally happen to be upon the point of performing our Parliamentary obligations. If this bill had been brought in next year, we should have clearly been entitled to a *locus standi*. As it is, the Lancashire and Yorkshire, who are our competitors, will be heard and may obtain clauses for their protection.

Mr. RICKARDS: If so, they are sure to be general clauses applicable to all railways.

Littler: The Lancashire and Yorkshire may make terms with the corporation and withdraw their petition.

Mr. RICKARDS: That argument applies to a great many cases, but it will not give a man a *locus standi* who has no real *locus standi*.

Littler: If the landowner petitioned, Parliament would say—"Surely this is the business of the purchaser."

Mr. PEMBERTON: You are only in the position of possible purchasers?

Littler: No, we are certain purchasers; and as to the argument that the landowners should petition, they do not even know within the limits of deviation what land we mean to take.

Mr. RICKARDS: Your argument requires that there should be two *loci standi* in respect of the same land. There is no doubt as to the *locus standi* of the landowner who is going for the first time to be taxed.

Littler: I cannot say that we are landowners. We are trading corporations under a statutory obligation to buy the land. We are merely going to be landowners.

Mr. PEMBERTON: You have compulsory powers to take the land, but until you exercise these powers the owners are the proper persons to petition.

Littler: If we are not heard, nobody will be heard, for nobody can represent our interests. The landowners cannot do so, because we ask for an exemption which landowners cannot get. In some cases we have got exemptions in boroughs from liability to full assessment. Where there is no special exemption, the borough rate is levied on the full amount. That will be the case here.

Mr. RICKARDS: Why did you not ask for these exemptions in your own Act?

Littler: The extension of the borough was not then contemplated. We could hardly ask that the exemption should apply to any future borough that might be created. The rates then

in existence were those levied by rural authorities in respect of which, under the General Acts, we already enjoy partial exemption. If the land is left as it is, under the Local Government Act, we shall have the exemption which we seek to introduce into the bill.

Mr. RICKARDS: As a general rule the borough rate is not subject to these differences.

Littler: No. Wherever the sanitary authority is anything but a corporation, there is a three-fourths exemption in favour of railways. The district sought to be annexed to the borough contains only 70 inhabitants, so it seems as if the corporation proposed to annex it simply in order to include our line. We also ask to be heard on the ground of the buildings which may from time to time be erected by us. We say they ought to be exempted from municipal restrictions and regulations as to building. On this point we represent a whole class of traders.

Mr. RICKARDS: You ask that a clause should be put in the bill; you do not object to anything that the bill contains on this subject?

Littler: We ask that we should be subject to the same legislation in this respect as exists in Leeds and other places.

Pembroke Stephens (for Mr. Rhodes): The petitioner owns mineral rights extending under the whole of the district to be included in the borough. It is purely a mining and agricultural district, offering no scope for drainage operations or water supply, and having no need for public lamps, so that landowners there would derive no advantage from being brought within the municipal limits. The object of the corporation, in short, is not a *bona fide* one; it really is to acquire authority to levy heavy rates upon the petitioner, with other lessees and occupiers of lands and minerals. If the bill passes, the value of the petitioner's property will be greatly deteriorated without any public necessity.

Wells: This gentleman has signed a general petition—that of the rural authorities in his district—containing precisely the same allegations as his own.

Stephens: That petition represents interests upon the surface. Mr. Rhodes has interests below the surface, as lessee of all the minerals in the district covered by the proposed extension. His interest is an extremely large one, comprising over 1,000 acres. Besides, there are plenty of cases in which people who have signed one petition have been heard upon another.

Mr. RICKARDS: I do not think we have any rule preventing the same people from being heard upon two petitions.

Stephens: The nature and extent of the petitioner's property in the district show that we have an interest apart from that of the local authority. No other person has any mineral rights in the district, and we therefore represent the only interest of the kind there, our rateable value being one-half of the rateable value of the district. The following cases are in my favour:—*St. Helen's*, 1 Cliff. & Steph. 52; *Cardiff*, petition of Lord Bute, 2 Cliff. & Steph. 154; *Sligo*, 1 Cliff. & Steph. 56; *Rochdale*, petition of Owners, &c., 2 Cliff. & Steph. 255.

Wells (in reply): The *St. Helen's* case may

be distinguished from this, because there the owners had a special exemption under a former Act, and apprehended it would be destroyed by the bill. The Lancashire and Yorkshire company are only ordinary rate-payers, and there is no reason why they should get the exemption they seek, considering the enormous advantages which railway companies derive from being subject to the jurisdiction of a corporation.

Mr. RICKARDS: I do not think you can use the argument that they will get advantages in the way of a set-off as an answer to their claim to a *locus standi*. They say that their property, now outside the borough, will, by being brought within the borough, be subject to taxation from which it is now free.

Wells: The *St. Helen's* case hardly goes the length of saying that every owner of property brought within the municipal limits has a right to be heard. He must show special injury apart from the mere question of additional taxation. In the *St. Helen's* case existing legislation for the benefit of the petitioners was going to be repealed.

Mr. RICKARDS: It comes to pretty much the same thing whether you take away an exemption or put on a new tax.

Wells: The Lancashire and Yorkshire are represented as ratepayers by the local authority. If you depart from that principle, every owner may appear.

Mr. RICKARDS: If a landowner is going to be subjected to taxation which he has never paid before, the effect of which will be to make his land less valuable, that gives him a definite ground upon which he can claim a *locus standi*.

Wells: If the Court is of opinion that the *St. Helen's* case governs this case, I will not carry the argument further.

Mr. RICKARDS: That is the opinion of the Court.

Wells: As to Mr. Rhodes, the other petition signed by him is an echo of this petition, and fully covers his case. To show that this is so, I will refer to the other petition.

Stephens objected.

Mr. RICKARDS: I think it has been the practice of the Court to allow a reference to other petitions against the same bill.

Wells referred to the other petition, to show that the petitioner's grievance was fully stated in it.

Mr. RICKARDS: Paragraphs 7 and 9 of this petition are distinct paragraphs as regards the petitioner's own interests.

The CHAIRMAN (after deliberation): The *locus standi* of the Lancashire and Yorkshire railway company is *Allowed*. The *locus standi* of the Midland and North Eastern Railway Companies is *Disallowed*. The *locus standi* of Mr. Rhodes is *Allowed*.

Agents for Bill, *Baunters & Co.*

Agents for Lancashire and Yorkshire, and for Midland and North Eastern Railway Companies, *Sherwood & Co.*

Agents for John Rhodes, Wyatt, Hoskins, & Hooker.

LIGO, LEITRIM, AND NORTHERN
COUNTIES' RAILWAY BILL.

July, 1875.—(Before Mr. PEMBERTON, M.P.,
the Chair; Sir JOHN DUCKWORTH; Mr.
KARDS; and Mr. BONHAM-CARTER.)

IONS of (1) GRAND JURY OR COUNTY CESS-
PAYERS; (2) OWNERS, LESSEES, AND OCCUPIERS
LAND ON THE LINE OF THE PROPOSED RAIL-
WAY, AND CESS AND RATEPAYERS.

ay in Ireland—Dividend—Baronial Gua-
antee—Grand Jury—Constitution of—Present-
ment Sessions—Board of Guardians—Cess-
payers—Ratepayers—Contingent Liability of—
New Taxation—Distinct Interests—Local
Authorities—Doctrine of Representation—
Concerning Bodies—Nominated and Elected—
Distinction between, for Representative Pur-
poses—County Justices in England—Commis-
sioners of Supply—How far Representatives of
Ratepayers—S. O. 167 (as to Irish Guaranteed
Laws)—S. O. 25 (Assent of road authorities
[Railway Bills]).

It was sought by the bill to incorporate a
company for the construction of a railway
in Ireland, and to enable certain baronies,
through the grand juries, to guarantee a
dividend of 5 per cent. upon a part of the
authorised capital for a period of 28 years
from the opening of the railway, and to
raise the sums required for making up such
guarantee. A S. O. passed in the previous
session required that bills containing baronial
guarantees charged upon grand jury cess
or any other local rate in Ireland should be
approved by the grand juries, presentment
sessions, boards of guardians, or other
authorities empowered to make such local
rate. This approval had been obtained in
the terms of the S. O.; but the bill was
opposed by cess and ratepayers in the
various baronies, who objected to the
guarantee and the additional taxation it
might create. The promoters contended
that the petitioners were represented by
the local authorities, who had assented to
the bill, and that the S. O. was designed to
exclude the opposition of any other parties
than the governing bodies therein specified:
that as the grand jury and the presentment
sessions were nominated, not elected, while
the duties of boards of guardians were con-
fined to the relief of pauperism, and they
had nothing to do with the rates which must
be levied to make up the guarantee, the
cess and ratepayers were not represented by

those bodies for purposes of *locus standi*,
and that the new S. O. had made no change
in the right of petitioning which previously
existed. The *locus standi* of the petitioners
was therefore allowed.

The *locus standi* of grand jury or county cess
payers was objected to, because (1) a new S. O.
(167) provides that when any railway bill pro-
poses the payment of any monies, directly or
contingently charged upon grand jury cess or
any other local rate in Ireland, by means of a
guarantee or otherwise, such bill shall be sub-
mitted to the grand juries, presentment ses-
sions, boards of guardians or other authorities
empowered to make such local rate for their
approval, &c.; (2) the bill has been so sub-
mitted and has been respectively approved by
the grand juries, presentment sessions and
boards of guardians of the baronies in which
the petitioners are cess or ratepayers, in the
manner and form prescribed by the S. O.; (3)
the petitioners have no interests different from
those of the general body of ratepayers rep-
resented by the grand juries, presentment ses-
sions, and boards of guardians of their respec-
tive districts, and are not entitled to be heard
separately on their own behalf; (4) when the
S. O. specially provides for the consents of local
authorities and such consents have been duly
obtained, it would be inconsistent with practice
to allow ratepayers or inhabitants represented
by such local authorities to appear in opposition
to the decision of such authorities, and the
petitioners therefore are not entitled to be heard.

The *locus standi* of the owners, &c., (2) was
objected to, because (1) none of the town lands
in which the petitioners allege that they hold
property are delineated upon the deposited plans
and therefore none of the petitioners can be
heard as owners, lessees, or occupiers of lands
and houses in the line of the proposed railway.
The remaining objections were similar to those
taken to the *locus standi* of petitioners (1).

O'Hara (for both petitioners): The question
turns upon the effect of S. O. 167. If the
local authorities approve of the bill in the terms
of the S. O., are the cess and ratepayers thereby
deprived of the right to be heard? The doctrine
of representation by local authorities only
applies where the taxpayers elect such author-
ities. Here that is not the case. The three
bodies whose approval is necessary are, first,
the grand jury; secondly, the presentment
sessions; and thirdly, the board of guardians.
Under 6 and 7 Will. IV., cap. 116, the grand
jury is nominated by the sheriff, who is not
even bound to see that each barony is repre-
sented on each grand jury. They are, in short,
a body summoned upon no fixed principle; they
are selected by the sheriff at his discretion.
The functions of the grand jury when ap-
pointed are similar to those of highway boards
in England and justices at quarter sessions.
They maintain the roads, bridges, gaols, and
public buildings; but they cannot of themselves
initiate taxation. This power belongs to the
presentment sessions, who are appointed under

the same Act (section 8). The grand jury thus nominated arbitrarily by the sheriff are to choose certain persons to be associated with the justices at the presentment sessions. Practically this second body are the nominees of the grand jury, who are themselves the nominees of the sheriff. By section 133 there is what amounts to a statutory confession that these bodies are not sufficiently representative, because the Legislature not only provides that a presentment by the presentment sessions should be affirmed by the grand jury, but, supposing it affirmed, it must still be submitted to the going judge of assize, and before he fiat the presentment, every ratepayer in the county has a right of appeal. Thus neither the grand jury nor the presentment sessions is a representative body; and as to the boards of guardians they are only elected for the specific purpose of administering the laws relating to the relief of the destitute poor. They have nothing to do with county or grand jury cases; the assessment for these purposes and for poor's rate is different; and the unions and the baronies are not co-terminous. The House of Commons could never intend to deprive cesspayers of the right to petition. All the S. O. does is to require a *prima facie* case in behalf of a bill containing a guarantee, and this *prima facie* case is to be shown by the assent of certain local bodies. In much the same way S. O. 25 provides that, where a tramway is proposed, the consent of the local and road authorities having jurisdiction over two-thirds the length of such tramway shall be sufficient; but no one could argue that the authorities exercising jurisdiction over the remaining one-third were thereby excluded from opposing the tramway. (*London Street Tramways*, 2 Cliff. & Steph. 85.) As to the petition of owners and occupiers, I admit that their land is not affected, and therefore withdraw their names from the petition.

Venables, Q.C. (for promoters): The petitioners do not allege any distinct interest, nor is it suggested that they have such an interest, or that they ought not to be bound by a majority of the other ratepayers. All the constituted bodies elected, not elected, or partially elected have approved of this measure, and by that approval the petitioners must be bound. As to the constitution of the grand jury, the rule of representation does not depend on the way in which local authorities are constituted. It is for Parliament to judge of the best way of constituting them, whether by election or other methods; if they are constituted by law, local authorities effectually represent the inhabitants. For example, ratepayers could not be heard where either the county justices appeared in England, or the commissioners of supply in Scotland, also a non-elected body. By S. O. 167, the House of Commons indicated the bodies who should represent the ratepayers.

Mr. RICKARDS: Can you say that a public body represents a man if he has no voice in the election of that body?

Venables: Representation does not necessarily depend on election; it may exist by force of law in a non-elected body. Thus the House of Lords is representative for purposes of legislation.

Mr. RICKARDS: If I nominate somebody to act on your behalf, can it be said that he represents you?

Venables: If you have the legal right to nominate him on my behalf, he undoubtedly represents me.

Mr. RICKARDS: Though you are not asked for your consent?

Venables: The law is equivalent to my consent. Here the grand jury have been appointed by Parliament to tax, and they are so far representative; and the S. O. points to them and other constituted authorities as standing in the place of the ratepayers for the purposes of these bills. Some of the petitioners reside in Sligo, and are directly represented by the town council, whose consent we have obtained; but my argument is that town councils are no better than other governing bodies who deal with rates; the question of election is irrelevant if the person consenting is the proper legal authority. Individual ratepayers could not be heard against the commissioners of supply.

Mr. RICKARDS: I am not prepared to say that a large body of ratepayers might not be heard independently of the commissioners of supply.

The CHAIRMAN (after deliberation): In this case we *Allow* the *locus standi* of both sets of petitioners. Both are the petitioners of cesspayers. We do not think that S. O. 167 has made any difference in the right of petitioning which persons had previous to the S. O.

Agents for Bill, *Baxters & Co.*

Agent for Petitioners, *Sharkey.*

SOUTH STAFFORDSHIRE WATER BILL.

8th July, 1875.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Petition of CORPORATION OF DUDLEY.

Water Company—Increase of Capital—New Works—Extended Area of Supply—Municipal Corporation—Complaint of Deficient Supply—High Rates—Bad Quality of Water—Covering of Reservoirs—Filtration of Water—Test of Claim to Locus Standi—Not Existing Grievances—Bill must contain Provisions Positively Injurious to Petitioners—Refusal to Supply Part of Borough—Waterworks' Clauses Act, 1847.

A water company supplying the borough of D., with other districts, promoted a bill authorising them to enlarge their area of supply, construct new works, and increase their capital. The corporation of D. petitioned on the ground that the water supply was deficient in quantity and bad in quality,

that the area of supply was too large already, that the rates charged in D. were exceptionally high, and that, if the bill passed, clauses should be inserted to secure the covering of reservoirs (the water of which was now exposed to contamination), filtration of water, and reduction in price to that charged in other portions of the company's district:

Held, that, there being nothing in the bill to aggravate the evils from which the petitioners stated that they now suffered, a mere allegation that increase of the company's capital would perpetuate these evils did not afford any adequate claim to a *locus standi*.

(*Per Cur.*) The argument that existing grievances can only be redressed when a company comes for fresh powers, involves the right to claim a *locus standi* against any bill, whatever its object may be, if any one has an existing grievance. *E.g.*, if the London and North Western railway company brought in a bill to make a small branch, traders anywhere might, upon this principle, be admitted to complain of the rates charged for goods, and people throughout the whole North Western system might complain of deficient accommodation.

The *locus standi* of the corporation of Dudley was objected to, because (1 and 2) no lands of theirs will be taken or used, no works constructed within their borough, and they will not be injuriously affected by the bill; (3 and 4) they do not allege that the powers sought by the bill, including the proposed extension of limits, will prejudicially affect the water supply within the borough. On the contrary, such supply will be greatly improved by the execution of the works sought to be authorised; (5) the petition deals with matters foreign to, and not such as can be gone into in discussing the bill; (6) the bill does not authorise the company to charge in the borough of Dudley rates higher than those now chargeable there; (7) the petitioners cannot be heard according to practice.

Sargood, Serjt. (for petitioners): We complain that Dudley now does not get a good supply of water from the company, and we doubt whether the bill will secure that object, with additional clauses, in the public interest. When a company, as we allege here, are not fulfilling their statutory obligations, power to increase their capital and extend their limits, so as to enable them to do a fresh trade elsewhere, must prejudice the people they now supply, and no specific allegation to this effect is necessary. In 1853, the promoters obtained powers to purchase the undertaking of an old company which supplied Dudley with

water. The result is that, while they charge low rates in other parts of their district, they obtained the power of charging exceptionally high rates in Dudley and the neighbourhood. We say that these rates ought to be reduced, and we also allege that for years past the supply of water has been deficient in quantity, both for public and private purposes, and defective in quality. Proceedings have been taken against the company for this deficiency, but they have refused to allow an inspection of their works, with a view to ascertain the cause of the deficiency; and provision should be made in the bill to allow of such inspection. The company's limits of supply now embrace a very extensive district in the counties of Stafford, Derby, Warwick, and Worcester, and notwithstanding repeated extensions of their district, they now propose to enlarge their limits still further. As the sanitary authority, responsible for efficient water supply within the borough of Dudley, we object to such further extension unless provision is made in the bill for insuring us at all times an adequate supply of water, in accordance with the Waterworks' Clauses Act, 1847, ss. 35 and 42. The water now supplied to us is often turbid and impure; at times it is even offensive and dangerous to health. The reason is that the company's reservoirs are situated in close proximity to ironworks, collieries, and manufactories, emitting large quantities of smoke and noxious gases. We say that these reservoirs should be covered and the water filtered; and the bill ought to contain clauses to this effect. Then the company refuse to supply a large and populous district within the borough, on the ground of its elevation; and we say that the company should be required to supply the whole borough at a proper pressure by gravitation or otherwise. We also ask to show that the new capital proposed (£200,000) is excessive.

Mr. RICKARDS: Can you point out anything in the bill which tends to increase or aggravate the evils from which you say you now suffer?

Sargood: It tends to perpetuate them, and our only chance of obtaining redress for our grievances is when the company asks for fresh capital or further powers.

Mr. RICKARDS: Your argument involves a right to claim a *locus standi* against any bill, whatever its object may be, if anyone has an existing grievance. A bill might be brought in by the London and North Western to make a small branch, and upon the principles for which you contend, traders should be admitted to complain of the rates charged for goods; and all sorts of people from all parts of the line to complain of deficient accommodation.

Sargood: If the water company were merely asking for power to make a new reservoir for completing a supply already authorised by Parliament, we might have no *locus standi*; but they are asking, not to improve their supply, but to get a new district, a new trade, and a new capital. Surely, under such circumstances, we have a right to show that they have not properly discharged the duty already entrusted to them by Parliament.

Mr. RICKARDS: If that is enough, then the Court must give up the principle which has been

hitherto adopted, namely, that there must be something in the bill which tends to injure the petitioners.

Sargood: The question is, whether the power to raise additional capital does not injure us by postponing the period at which we should have a right to reduction of rates owing to surplus profits. Though we failed to obtain a *locus standi* in the House of Lords, clause 38 was inserted for our protection, to the effect that the company should not pay dividends exceeding 6 per cent. unless they reduced rates in Dudley. The clause, however, is illusory, because there is a reserve fund into which surplus profits will pass after the 6 per cent. is paid; and even the limited price for which clause 38 provides in our favour is in excess of the maximum prices which the company are charging under their General Act in other districts.

Bilder, Q.C. (for promoters) was not called on to reply.

Locus standi Disallowed.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *Cooper.*

SUTTON BRIDGE DOCKS BILL.

Petition of (1) MAYOR, ALDERMEN, AND BURGESSSES OF THE BOROUGH OF WISBEACH.

8th July, 1875.—(Before *Mr. PEMBERTON*, M.P., Chairman; *Sir J. DUCKWORTH*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Docks Bill—Navigation—Interference with—Tolls—Town Nine Miles up Stream—Rival Dock Bill—Rival Scheme in Contemplation—Competition—Abstraction of Traffic—Conservancy Powers—Berth-piles and Mooring-posts—General Powers of taking Lands—Proprietors, in posse—Not in esse—Limited v. Landowners' Locus.

A bill for the construction of a dock and approaches at S. was opposed by the corporation of W., a town nine miles higher up the river. In the House of Lords a rival bill, also by a private company, for the construction of a dock at W. had been rejected. The corporation of W. now claimed to have a measure of their own in contemplation for next year, and meanwhile sought to be heard as conservators of the port and harbour, which included S. within its limits. Clauses as to the execution of the works had been arranged with the river outfall commissioners, who did not petition; but the corporation under an Act of 1810 claimed the power of taking land in any

part of the harbour, and of erecting berth-piles and mooring-posts, if need be, on the very site of the proposed dock. It was objected that these powers were too vague and that the apprehensions expressed by the corporation as to future injury to W. from the dock at S. were too remote:

Held, on the question of competition, that the promoters need not reply; but that as guardians and quasi-proprietors of the spot where it was proposed to construct the dock, the petitioners were entitled to a landowners' *locus standi*.

The bill had for its object to incorporate a company and authorise them to make and maintain a dock and other works on the River Nene at Sutton bridge.

The *locus standi* of the mayor, &c., was objected to, because (1) Wisbeach was situate nine miles higher up the River Nene than the proposed dock, and petitioners accordingly could not be injuriously affected; (2) the powers sought to divert water from the river to supply the proposed dock and cut, and of dredging, scouring, and deepening the bed of the river, would not interfere with any rights claimed by petitioners of setting down berth-piles and mooring-posts, and the tolls on vessels in the port and harbour were not affected; (3) at the instance of the commissioners of the Nene outfall, all works affecting that river, or the channel banks or forelands thereof, must be executed to the reasonable satisfaction of those commissioners; (4) mere intentions of the corporation to construct docks at Wisbeach formed no ground of *locus*; (5) no sufficient reasons had been alleged; and (6) no rights, &c., were interfered with.

Venables, Q.C. (for the mayor, &c.): We are guardians of the port and harbour of Wisbeach, and as such entitled to take tolls to be spent on the improvement of the navigation. In making and maintaining the entrance to their proposed dock, the promoters will interfere with the rights which we now have to set down berth-piles and mooring-posts. We ourselves have had under consideration a scheme for constructing docks, &c., at Wisbeach, and should have promoted it this year but for the extensive nature of the investigation, which delayed Sir J. Coode's report. Meanwhile, against our wish, this bill for a dock at Sutton bridge has been introduced; and also a rival bill by a private company for a dock at Wisbeach, which failed in the House of Lords. We shall *bonâ fide* introduce our bill next year, but meanwhile, if the works now proposed are sanctioned, they will clash with it and obstruct the navigation.

The CHAIRMAN: Is the bed of this river vested in the commissioners of the Nene outfall?

Venables: They have certain functions. But an Act of 1810 practically makes us conservators of the navigation, and entitles us, among other things, to take land as may be required for the

preservation and improvement of the harbour. We are the only judges of the necessity, and might in our discretion put down berth-piles or mooring-posts on the very site of this dock. We have spent £1,600 a year on the improvement of the navigation, whereas the people at Sutton have spent nothing. This gives us a claim to object to a dock injurious to our interests at Wisbeach. Our *locus* generally was contested and established in the House of Lords.

Mr. BONHAM-CARTER : Do the commissioners of the Nene outfall petition against the bill ?

Bidder, Q.C. (for promoters) : On the contrary, clauses have been arranged to their satisfaction.

The CHAIRMAN : The points for the promoters to address themselves to, are paragraphs 5 and 6 of the petition (as to power of the corporation to levy tolls, and exercise conservancy rights).

Bidder, Q.C. (in reply) : Vessels going to this new dock, equally with those proceeding up the river, will pay the harbour tolls ; hence there is no money injury to the corporation of Wisbeach. I admit that as regards possible interruption of their power of fixing mooring-piles, they are entitled to a *locus* ; but this should be strictly limited to interference with navigation. The great bulk of their petition is as to the competition which they fear at Sutton bridge.

The CHAIRMAN : How could we limit the *locus standi* to a particular subject ?

Bidder : By admitting them only so far as the bill may be prejudicial to the navigation of which they are the guardians.

Mr. RICKARDS : This is a bill to construct docks, and these petitioners are the guardians, and in a certain sense *quasi*-proprietary, of the spot where the docks are proposed to be constructed. It is more like a landowner's opposition than anything else.

Bidder : But they do not allege that we interfere even with a mooring-post.

Mr. RICKARDS : They do allege that they have the right of taking part of the land proposed as the site of these works. Under the Act of 1810 they are proprietors *in posse*, though not *in esse*. If a railway company has power to take certain lands, and another company comes and proposes to take part of these lands, the first company has a *locus standi*.

Bidder : The company there would have power given them to take specified lands for a particular purpose. Here there is a general power to take lands whenever they may be required, within the whole region of the harbour, in perpetuity. The corporation do not allege that they require for any purpose the actual lands that we propose to take.

The CHAIRMAN : We must allow a *locus standi* generally in this case.

Locus standi Allowed.

Agents for Petitioners, Sherwood & Co.

Petition of (2) RATEPAYERS OF THE BOROUGH OF WISBEACH.

Dock—Navigation—Interests of Upper and Lower Waters—Ratepayers—Traders—Railway Company Sealing Petition of Inhabitants—Rival Dock Scheme—for Next Year—Competition—London Dock Companies—Opposition in House of Lords—Abstraction of Traffic—Insufficient Allegations.

Against a bill, authorising the construction of a dock at S., nine miles lower down the river, the ratepayers of W. (and a railway company which sealed their petition) sought to be heard on the ground of injury to the local interests, and also because the works proposed would interfere with a rival scheme for docks at W., which the corporation of that place had in contemplation. According to the wording of the petition, however, the diversion of trade, concerning which apprehensions were thus expressed, was (in the opinion of the Court) from the dock at W., which as yet existed only in intention, and not from the town :

Held, that the injury was too remote, and *locus* disallowed, without calling for a reply.

The *locus standi* of the ratepayers was objected to, because (1) they did not specify their grounds of objection with sufficient distinctness ; (2) their alleged contribution towards the improvement of the navigation from Wisbeach to the sea was too vague and general ; (3) intentions of the corporation as to docks at Wisbeach gave petitioners no claim to be heard (4) either as to design or cost of the works ; (5) petitioners were only a small portion of the ratepayers, not representative of others, and themselves represented by the corporation ; (6) the Great Eastern railway had no real interest, and if they had, ought to have sealed a separate petition ; (7) no property, rights, &c., were interfered with, and petitioners had no sufficient claim, according to practice.

Littler, Q.C. (for petitioners) : We contribute to the cost of maintaining the navigation and object to the proposed works, which will be very detrimental to the interests of Wisbeach, where on the other hand the docks which the corporation contemplate will be valuable both to the trading and railway interests. We hold it to be unfair that Sutton bridge, which contributes nothing towards the expenses of the navigation, and is a place of minor importance, should divert traffic from Wisbeach. But the sanctioning of their scheme will interfere with the improvements at Wisbeach.

Mr. RICKARDS : Does it appear that it will be detrimental in any other way than in checkmating the Wisbeach scheme ?

Littler : A dock in such close proximity, lower down the river, must affect the trade of the town.

The CHAIRMAN: The petition intimates that your docks would be the better scheme; but does it allege that your trade will be interfered with?

Little: It says it "will divert trade therefrom."

The CHAIRMAN: But Wisbeach has no dock of its own. It is only thinking of making one.

Little: It has a navigation, the banks of which serve all the purposes of a dock.

The CHAIRMAN: Could any of the London dock companies oppose the construction of a dock at Gravesend?

Little: They did oppose the construction of the Victoria dock. It is only a question of distance.

Bidler, Q.C. (for promoters): I appeared for an existing graving-dock company against a proposal by the St. Katherine's dock company to construct another graving dock immediately adjoining, and was refused a hearing. That is a much stronger case. (*Ante*, 163.)

Little: These petitioners as well as the corporation were heard in the House of Lords. It is undesirable, unless there is a strong reason for it, to introduce a difference in practice between the two Houses.

Mr. RICKARDS: A Wisbeach dock bill was also before the House of Lords. Here we have only a project—an intention existing in the minds of the corporation for next year.

Little: For want of an allegation of a more definitely pointed character, the Court will not refuse a *locus* to traders upon the same river, and interested in the trade which it is the object of the bill to abstract. I rely on the *Savers Tunnel Railway case*, *petition of Gloucester and Berkeley Canal Company*. (2 Cliff. & Steph. 245.)

Bidler, Q.C., was not called upon to reply.

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Agent for Bill, *W. Toogood.*

WATERFORD IMPROVEMENT BILL.

Petition of (1) BURGESSES AND GRAND JURY RATEPAYERS OF THE BOROUGH OF WATERFORD.

14th April, 1875.—(*Before Mr. PEMBERTON, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Improvement Bill—Corporation—Grand Jury—Representation by—Ratepayers—Insufficient Number of Petitioners—New Taxes, Absence of—Bill Illegally Promoted—Grand Jury Cess—Diversion of—Presentment Sessions—Towns' Improvement Act.

A bill, promoted by the Corporation of Waterford for carrying out certain improvements

in their borough, was opposed by 18 ratepayers and grand jury cesspayers, there being 2,000 burgesses and 781 grand jury ratepayers in Waterford. It was objected that the burgesses were represented by the corporation, that the bill did not authorise any increased rating, and that there was no ground for the allegation of the petitioners as to the injurious effect on the finances of this borough of the powers sought by the promoters:

Held, that under these circumstances, the petition bearing so small a number of signatures in proportion to the total number of ratepayers, &c., the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the bill is brought in by the corporation of Waterford, under their common seal, after a public meeting of inhabitants and burgesses, duly convened in September, 1874, at which the bill was approved; (2) the petitioners, who are only 18 in number, do not represent the burgesses and grand jury ratepayers of Waterford, the former of whom are 2,000 in number, and the latter 781; (3) they do not represent the grand jury of Waterford, the great majority of whom, when nominated yearly, are always members of the town council; (4) those of the petitioners who are burgesses are represented by the corporation (two of them being members of the town council) and cannot be heard against that body; (5) no rights, property, or interest of the petitioners are interfered with, nor does the petition show that they are personally affected; (6) they have no distinct interest from the inhabitants of Waterford, who are 30,000 in number; (7) they admit that the legal question of the right of the promoters to promote the bill can be, and has been, raised elsewhere; (8) they do not show that any new rate is to be levied under the bill, and the grand jury cess and the corporate income are to be kept separate under it; (9) they allege no ground entitling them to be heard according to practice.

Saunders (for petitioners): The Waterford corporation have not incorporated the Towns' Improvement Act, nor held any meeting thereunder, or taken any sufficient steps to ascertain the views of the taxpayers and burgesses of Waterford, as to the propriety of promoting the bill, the expenses of which we are advised it is illegal for them to defray out of the borough funds. We apprehend that in case the speculative projects, which the corporation seek to engage in under the bill, do not pay, the borough fund will be diverted from its most important practical purpose under the Municipal Reform Act, viz., that of paving, lighting, and cleansing the city, and that these objects will have to be provided for, either by the imposition of an excessive grand jury cess, or some tax to be im-

posed under the Towns' Improvement Code. We object to the proposed transfer of the taxing powers of the grand jury to the town council, because it fuses into one the tax called the jury cess, and the other corporation tax now existing, and because, whilst there now exists against improvident expenditure the salutary check that all works proposed to be executed must pass a presentment sessions, at which the ratepayers are entitled to be represented, under the bill no such safeguard is provided. The entire operation of ordering the work and arranging for its cost will be in the power of the municipal body, subject only to a traverse before a jury at the assizes, which is too expensive a remedy to be really effectual. With regard to the objection that there is not a sufficient number of signatures to the petition, the question is whether they are substantial people or not. Though 18 may not be a large number, three of them are magistrates, and nine of them are merchants, and, therefore, belong to a tolerably good class for purposes of representation. They are people rated at £4,000 out of a total rating of £35,000.

Pembroke Stephens (for promoters): The bill being promoted under the corporate seal, 18 burgesses and grand jury ratepayers claim to be heard out of 2,000 burgesses, and 781 grand jury ratepayers. There has been no meeting at which it was resolved to present this petition. The bill provides for no increase of rates, and the corporation by dint of good management have been able hitherto to make the rents and profits of their lands suffice. In addition to this, by leases falling in, our revenue will in 20 years' time be increased by £15,000 a year. So there is no ground for apprehension as to the state of the corporate finances. These petitioners are either represented by the corporation, who promote the bill, or by the grand jury, who have met since it was introduced, and who do not petition against it. With regard to the grand jury cess, no clause in the bill enables the corporation to divert it from its present application. Supposing the corporation were in difficulties, and had not their surplus revenues to fall back upon, they could not, without express power, take the grand jury cess and apply it for borough purposes. If they attempted to do so, the law would stop them.

The CHAIRMAN: The *locus standi* of the Burgesses and Grand Jury Ratepayers is *Disallowed*.

Agents for Petitioners, *Martin & Leslie*.

Petition of (2) WATERFORD HARBOUR COMMISSIONERS.

Corporation — Harbour Commissioners — Water-Bailiff's Fees — Application of — British v. Irish Currency — Ancient Charters — Arrangements between Corporation and Harbour Board — "During Pleasure" — Alteration of — Status quo.

In an improvement bill, a corporation, authorised under very ancient charters to appoint a

water bailiff, took powers to levy the water bailiff's fees in British in lieu of in Irish currency, to make fresh arrangements as to the application of these fees, and, if they so determined, to pay the whole amount into the borough fund. The charters were silent as to the application of the fees; but under a resolution of the corporation, and an arrangement existing, as alleged, "during pleasure," the harbour authority had been allowed for upwards of half a century to receive these fees and apply three-fourths of the total amount to shipping as distinguished from municipal purposes. The harbour authority petitioned against the bill with a view to maintain the *status quo*, admitting at the same time that the right of appointment was in the corporation, and that the proposed change in the currency would be beneficial:

Held, that the harbour authority were entitled to be heard against any clause affecting the application of the money.

By clauses 74 to 78 of the bill the corporation took power to make arrangements with the harbour commissioners as to the water bailiff's fees; to levy these in British in lieu of Irish currency, and, until otherwise agreed on, to pay these fees into the borough fund. The promoters claimed under their charter of 2 Charles I. (1626), and earlier charters revived by that charter and extending back to the charter of 7 John (1205), powers of appointing and removing the water bailiff at pleasure. The petitioners as the general harbour authority had, however, been allowed since their constitution by Act of Parliament in 1816 to receive the water bailiff's fees, and in practice, and by arrangement between the two bodies, three-fourths of the amount were applied to harbour and one-fourth only to municipal purposes. While assenting to the change from Irish to British currency, the petitioners objected to the further powers sought by the corporation in the bill.

The *locus standi* of the commissioners was objected to, because (1) no rates or tolls belonging to them were taken or affected; (2) the water bailiff was wholly under the jurisdiction of the corporation, and express saving clauses were contained in the commissioners' Acts; (3) the commissioners were allowed *ex gratia* to receive and disburse the water bailiff's fees, but the arrangement only rested on a resolution which the corporation could terminate. (The remaining objections were of a formal character.)

Lane (for petitioners): Last year the water bailiff's fees amounted to £10,655, of which we only paid over to the corporation £2,663. If the corporation obtain these powers, they may in future collect and appropriate the entire revenue, disregarding the arrangement which has worked advantageously for so many years. We

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as an equivalent. (*London and North Western (England and Ireland) Bill, supra, 93*).

Cripps, Q.C. (for promoters): It is true that the Midland have running powers over the Walsall and Wolverhampton line, but this proposed line is not in the least parallel with that line or the line by which they reach it. The two lines are as nearly as may be at right angles. Assume that the Walsall and Wolverhampton company are anxious to have our line as a feeder of their own, the fact that the Midland company have obtained running powers over that line for the purpose of getting traffic to Walsall from their own system, cannot entitle them to be heard against another company who desire, as an independent company, to make a railway to communicate with the Wolverhampton and Walsall railway. We say there is no competition.

Venables: We say the line will enable the London and North Western to take away our traffic.

Cripps: The Midland are far from this point. They have by their running powers the right to bring their own traffic to the Walsall and Wolverhampton line, but that right is not interfered with by the making of another line in a district entirely away from the Midland, which is to bring traffic upon the Wolverhampton and Walsall railway. The *London and North Western* case, cited on the other side, was a case of amalgamation; and, therefore, the Cheshire Lines' Committee (one of the constituents of which is the Midland company) were properly heard against it. Where amalgamation bills are proposed, other companies interested have a right to oppose the amalgamation.

Venables: There is just as much of amalgamation under this bill as there was under the *North Western Bill*.

Cripps: There is nothing of the kind here. The bill merely authorises arrangements with the company already working the line which we join; and, of course, it would be absolutely essential in making a short branch of this kind that some such arrangement should be made. The competition alleged here is not such a competition as entitles the petitioners to be heard. It is competition a long way from the Midland district.

The CHAIRMAN: The Midland lies to the east, and can only approach this line from the east.

Cripps: Yes; this line is directly north and south, at right angles to the Midland system, and away from the Midland district altogether.

The CHAIRMAN: The *locus standi* of the Midland Company is *Disallowed*.

Agents for Petitioners, *Beale, Marigold & Beale*.

Petition of (2) THE LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railway — Occupiers — Compulsory Powers — Lessees — Owners — New Line — Physical Junc-

tion with existing Line — Working of New Line — By Agreement — Lease — Occupiers' Notice — Competition.

The London and North Western company claimed a *locus standi* on two distinct grounds, (1) competition, though little reliance was placed on this ground; and (2) as lessees of the Wolverhampton and Walsall railway, which they worked and occupied under a 999 years' lease, and with which the proposed line was to form a physical junction. Accordingly they had received notice as occupiers from the promoters, for the purpose of taking their land compulsorily:

Held, that they were entitled to a landowner's *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, railway stations, or accommodations of theirs are interfered with, nor running powers sought over their lines; (2) they do not allege between what points the proposed railway will compete with them for traffic; (3) the proposed railway will create no competition entitling the petitioners to be heard according to practice, (4) nor deprive them of traffic to an extent entitling them to be heard; (5) clause 6 of the bill seeks no power to enter upon or take any land of the petitioners except with their consent in writing; (6) the power contained in clause 38 can only be exercised with the consent of the petitioners, (7) whose petition discloses no ground upon which they can be heard.

Pope, Q.C. (for petitioners): Clause 38 names the London and North Western company as the company with whom arrangements are to be authorised; but, independently of that, we have an undoubted *locus standi*. The proposed line commences by a junction with the Wolverhampton and Walsall railway, which is worked by the London and North Western Railway under an agreement for 999 years; and under the bill there are compulsory powers sought over the lands and works of the Wolverhampton and Walsall railway, which, in a Parliamentary sense, is London and North Western railway. By an agreement scheduled to an Act of 1866, the London and North Western company first of all agreed to find £50,000 of the capital of the Wolverhampton and Walsall company, and by another section of the same agreement the London and North Western are constituted the occupiers of the Wolverhampton and Walsall railway, and the sole workers of that undertaking; being occupiers they have received the ordinary notice as occupiers of land, sought to be taken compulsorily under the bill; and I submit that, having received notice as occupiers, they are entitled to an unlimited *locus standi*.

Mr. RICKARDS: Does the Wolverhampton and Walsall company only exist for the purpose of

receiving and dividing the income among its shareholders?

Pope: That is so. An occupying and working company is held to be in the possession of the undertaking. (*Alcester and Stratford-upon-Avon Bill*, 1871, 2 Cliff. & Steph. 127.) We also claim a *locus standi* on the ground of competition.

Cripps, Q.C. (for promoters): The only way in which the petitioners can be affected is that it is proposed to enter into the same kind of agreement with them for the working of the proposed line as already exists between them and the Wolverhampton and Walsall company, but that agreement can only be made with their consent.

Mr. RICKARDS: The petitioners claim as occupiers of a line you are practically going to take. The Wolverhampton and Walsall line is transferred to the London and North Western, who are the occupying tenants of the line for 999 years, and you serve them with an occupiers' notice.

The *CHAIRMAN*: The *locus standi* of the Petitioners is *Allowed*.

Agent for Petitioners, *Roberts*.

Agents for Bill, *Dyson & Co.*

WEST KENT DRAINAGE BILL.

Petition of (1) KENT WATERWORKS COMPANY, AND (2) CONSUMERS OF WATER WITHIN THE DISTRICT OF THE KENT WATERWORKS COMPANY.

27th May, 1875.—(Before *Mr. PEMBERTON, M.P.*, Chairman; *Mr. BRISTOWE, M.P.*; and *Mr. RICKARDS*.)

Drainage Bill—Waterworks Company—Water Pipes—Wells—Pumping Station—Proximity of, to Proposed Sewer—Pollution of Water Supply—Question of Merits—Evidence—Reference to, taken before House of Lords—Prima Facie Case.

Water Consumers—Ancillary Petition—Customers of Petitioning Company—Distinct Interests.

The promoters of a drainage bill proposed to carry a main sewer through land which was traversed by the mains and pipes of a petitioning waterworks company, and in close proximity to their pumping station and some of their wells. The petitioners complained that the result might be the pollution of the water, which they supplied for the consumption of a very large population in Kent and the suburbs of the Metropolis. It was denied, on the other hand, that such an injury was likely to result from the proposed works:

Held, that the issue thus raised was of merits, to be determined and that the petitioners were entitled to go before a Committee of their apprehensions of injury. The consumers of water in the petitioned against the bill, and case on the same grounds. The customers of the first petition case appeared to be a mere duplication:

Held, that their claim to a separate must be disallowed.

The *locus standi* of the Kent water company was objected to, because (1) it are taken, or rights, or interests of ferred with; (2) no injury or nuisance caused to them by the construction proposed works; (3) their apprehensions unfounded and too remote; (4) the heard as ratepayers; (5) no ground hearing according to practice.

The *locus standi* of water consumers objected to on similar grounds.

Cripps, Q.C. (for both petitioners) House of Lords no objection was to *locus standi* of the Kent waterworks. The bill proposes a scheme of drainage of the works proposed being a which in its course passes within distance of the pumping stations of the water company, the wells be the chalk. Their system is so constructed that water might be drawn from any well in the whole district, and therefore a pollution of the water might affect any part of water supplied. The sewer goes along the our pipes are, but the possible pollution of water is our principal case. As it is shown, apprehension of injury is a reasonable ground, which must be gone into before the Committee. We allege in what way the injury is likely to arise from the proximity of the works, and we are entitled to go before a Committee to support our allegations by evidence. The waterworks company incorporated by Act of Parliament supplying our district with water should have a right to go to the Court for an injunction to restrain them from making works which might be likely to pollute our water, but if they object, it will be an answer to any claim we make. The answer will be, "you ought to have protected yourselves when Parliament passed the construction of the works." When the petition of consumers of water is intended to be somewhat ancillary to the main petition, it is a petition which the petitioners are perfectly entitled to present. Like travellers on a railway, who travel by that railway, because, if they reside in the district, they are supplied by any other company, and are entitled to go to the trouble and expense

themselves by wells. The promoters do not object that we are represented by the company, but that we shall not be injuriously affected.

Mr. RICKARDS: The question arises whether the customers of an undertaking which it is alleged may be injuriously affected by the works proposed to be authorised are entitled to be heard against these works?

Cripps: That point is not taken by the objections.

Mr. RICKARDS: They say you are altogether strangers to the matter, that no injury will be caused to you by the proposed works, and that the district of which the petitioners are inhabitants will not be injured.

Cripps: We allege a grievance as individuals, and not as a district. The promoters will no doubt contend that our case will be represented by the Kent waterworks company, but it is not a valid ground of objection to *locus standi* that somebody else is going to raise the same objection.

Round (for promoters): As to the waterworks company, you have to consider in all these cases whether the injury apprehended is direct and clear. They say the sewer will be in close proximity to their wells, but a witness in the House of Lords stated—

Cripps objected to any reference to evidence given in the House of Lords.

Round: By the bill the sewer is to be an efficient sewer. We should give the petitioners a right to compensation in the event of their being injured.

Mr. RICKARDS: The question for us is whether the petitioners have a *prima facie* case. They may be able to show that the execution of these works may damage their waterworks.

Round: Against sewerage bills proprietors of adjoining lands are not allowed a *locus standi*. (*Salford Borough Drainage and Improvement Bill*, 2 Cliff. and Steph. 132; *Birmingham Sewerage Bill*, *ib.* 232.) If we do any damage an action may be brought against us; and in the bill there is a clause saying that nothing shall authorise us to create a nuisance.

The CHAIRMAN: We need not trouble you on the case of the water consumers. Their *locus standi* is *Disallowed*. The *locus standi* of the Kent waterworks company is *Allowed*.

Agent for Petitioners (1 and 2), Rees.

Petition of (3) OWNERS AND RATEPAYERS IN ORPINGTON, &c.; AND (4) OWNERS AND RATEPAYERS IN BECKENHAM.

Ratepayers and Owners—Distinction between, for Locus Standi purposes—Board of Guardians—Poor-Law Union—Common Seal—Representation—Distinct Interest—Owners—Increased Rates—Property Reduced in Value by—Outfall Sewer—Contributory District—Local Government Act—Public Health Act, 1872—Rural Sanitary Authority—Acting Ultra Vires—Provisional Order.

The guardians of the B. poor-law union, as the rural sanitary authority, promoted a bill for the drainage of their district. The bill was opposed by owners and ratepayers in two-fourths of the union, who claimed to be heard before the Committee, and there to oppose the scheme on merits. It was argued, *contra*, that the petitioners were represented by the guardians, who promoted the bill under their common seal:

Held, that such of the petitioners as were ratepayers, being constituents of the promoting body, could not appear against the common seal, but that as the bill would impose a new liability to rates upon property within the district, the petitioning owners were entitled to be heard.

(*Per Cur.*) In cases where Provisional Orders may be sought for under General Acts, it cannot be maintained that it is *ultra vires* to petition for a bill.

The *locus standi* of petitioners (3 and 4) was objected to on the same grounds, because (1) the bill is promoted by the board of guardians of the Bromley poor-law union under their common seal, acting as the rural sanitary authority of the parishes, districts, and places situate within the district, and subject to the jurisdiction of the said board of guardians; (2) the parishes of Orpington, Saint Mary Cray, Paul's Cray, and Foots Cray, as well as the parish of Beckenham, are comprised in the said district; (3) the petitioners, as owners and ratepayers in these parishes, are constituents of, and represented on, the board of guardians, and are not entitled to be heard against a bill promoted under the common seal; (4) the petitioners do not to any extent or in any manner represent the interests of the ratepayers and inhabitants of the respective parishes; (5) no property or rights of theirs will be taken or interfered with; (6) no grounds exist for a hearing according to practice.

Michael (for petitioners): The object contemplated by the bill is two-fold. It is, first, to construct a main sewer for outfall purposes; and, secondly, to make a joint district for the purpose of contributing to the construction of the sewer. Both of those purposes are provided for. By sec. 75 of the Local Government Act, 1858, power is given to the sanitary authority to purchase land under the Lands' Clauses Consolidation Act compulsorily for the purpose of making a main sewer for outfall purposes, and by sec. 26 of the Public Health Act, 1872, power is also given by a Provisional Order to form a joint district.

The CHAIRMAN: Did you appear before the House of Lords?

Michael: No; because when the bill went to the House of Lords, the rateable value of the district was £400,000, and our contribution was small in proportion to the sum to be raised, but

the Lords cut out place after place from the rateable district, until the district, which is now to contribute to the expenses of the bill, was reduced to a rateable value of £100,000, which entirely alters the case. If the promoters had applied to the local government board for a Provisional Order, every single ratepayer would have been entitled to be heard against the application. They have, however, chosen, *ultra vires*, to apply for a private bill, there being no power by which a rural sanitary authority can apply for a private bill. The interests of parishes thus aggregated together for a common purpose are so diverse, that no single board of guardians can represent them all.

Mr. RICKARDS: You say that they ought to have taken another course of proceeding, not by bill. Can we go into that? We have the bill before us. Any private person may petition to bring in a bill, and any corporation may do so.

Michael: May a corporation do an act expressly contrary to the intention of the Legislature, and so exclude all persons interested from being heard as against them, when the act is *ultra vires* and can only be rendered legal and legitimate by the very Act itself, enabling them to recover their expenses?

The CHAIRMAN: The Bromley board of guardians are among the promoters of the bill, and are also in the parishes of the Bromley union.

Michael: Yes; but with interests diverse from the other portions. We are not represented in truth by the board of guardians, though governed by their seal. As respects owners of property, a burden is about to be imposed upon owners to which otherwise they would not be subject.

Round (for promoters): The Orpington, &c., petition is headed as a petition of "owners and ratepayers," but there is not a single allegation in which you distinguish the owners from the ratepayers or say anything about the interests of the owners *quod owners*.

Mr. RICKARDS: A number of the petitioners have withdrawn their signatures, and for anything we know, there may not be a single owner left.

Michael: I can prove that at least one is an owner, and owners are entitled to be heard where a fresh burden is going to be imposed, rendering their property less valuable. (*Cardiff Improvement Bill, petition of Lord Bute, 2 Cliff. & Steph. 154.*) With regard to the Beckenham petition, every owner signing that petition has described himself as such.

Round (in reply): The petitioners are represented by their common seal. The bill is promoted by the Bromley sanitary authority, *i.e.*, the board of guardians of Bromley union, which comprises some 15 parishes, Orpington and Beckenham being two of those parishes.

Mr. RICKARDS: The ratepayers are represented in the first instance by their own representatives at the board. The promotion of the bill is the act of the general board of which their representatives are component parts.

Round: Yes; the seal is the seal of the sanitary authority, the board of guardians, and that necessarily binds the petitioners, who elect representatives to that board. (*Metropolitan Street Improvements Bill, 2 Cliff. & Steph. 268;*

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The *locus standi* of the petitioners was objected to, because the competition (if any be created) with the Stourbridge canal affords no ground of *locus standi*, and if it did, the petitioners are not the proper persons to be heard.

Pember, Q.C. (for petitioners): One of the authorised lines, the Wolverhampton and Bewdley, will compete with the Stourbridge canal company. This will injuriously affect us.

The CHAIRMAN: Is the Stourbridge company a separate company?

Pember: Yes.

The CHAIRMAN: Is their *locus standi* objected to?

Cripps: No, for they are landowners apart from competition.

Pember: Under Act of Parliament we guarantee the Stourbridge canal company a minimum dividend of £9. Hitherto we have never had to pay anything, but if this competition be allowed, we may become liable. The fact that the Stourbridge canal also petition does not affect us. They might be settled with, and we should be left in the lurch.

Cripps, Q.C. (for promoters): The Stourbridge canal company will be heard against the bill as landowners. The petitioners are no more entitled to be heard than the owner in tail would be against a bill affecting land, when the owner in fee was also heard.

Locus standi Allowed.

Agents, Dyson & Co.

WHITBY, REDCAR, AND MIDDLESBROUGH UNION RAILWAY BILL.

Petition of (1) CLEVELAND EXTENSION MINERAL RAILWAY BILL.

3rd March, 1875.—(Before Sir J. ST. AUBYN, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Railway—Competing Lines—Joining Main Line of Third Company—Vesting of One Line in Third Company—New Competition thereby Created—Equal Competition made Unequal by Vesting—Working Agreements—Transfer of Undertaking.

The lines of the promoters and petitioners were in direct competition, and both joined the North Eastern railway. Both, also, had powers of making working agreements with the North Eastern company. The bill authorised the vesting of the promoters' line in the North Eastern. For the petitioners it was contended, that when the promoters'

line became the actual property of the North Eastern company, the present equality between promoters and petitioners would be disturbed, and it would be the interest of the North Eastern to favour the railway which had become their own. On the other hand, the promoters urged that inasmuch as competition already existed, the bill would introduce no such change into the conditions of this competition as entitled the petitioners to be heard:

Held, however, that they were entitled to a *locus standi*.

The *locus standi* of petitioners was objected to, because (1) the promoters' railway was authorised and in construction before that of the petitioners, and they are far apart; (2) the promoters, by authority from Parliament, made working agreements with the North Eastern railway company before the petitioners' railway was authorised; (3) the bill will create no increased competition; (4) no lands or rights of petitioners are interfered with; (5) the petition is inconsistent, and contradicts itself, and does not show that the petitioners have any such interest in the provisions of the bill as entitles them to be heard.

Little, Q.C. (for petitioners): The promoters' line and our own join the North Eastern lines at each end, and both companies have the usual power under their respective Acts to make working agreements with the North Eastern. We are, therefore, in direct and actual competition. By this bill the promoters are authorised to sell their undertaking to the North Eastern company. The result will be that it will no longer be the interest of the North Eastern to work our line on fair terms. (*Cleveland Extension Mineral Railway Bill*, 2 Cliff. & Steph. 228.) In the *North and South Western Junction Railway, No. 2, Bill* (*Ib.* 116), where the *locus standi* of petitioners was disallowed, the circumstances were different from those in this case.

Saunders (for promoters): We do not deny that competition exists, but we do deny that any new competition will be created. The question is whether the conversion of a working agreement into a vesting is likely to create such a difference of competition as to entitle petitioners to be heard. The *North and South Western Junction Bill* is in my favour, so is the *Carnarvonshire and Nantlle* (1 Cliff. & Steph. 94).

Locus Standi Allowed.

Agents for Petitioners, Wyatt, Hoskins, & Hooker.

Petitions of (2) LOFTHOUSE IRON COMPANY, and
(3) THE EARL OF ZETLAND.

*Railway—Extension of Time—Lessor and Lessees
of Minerals—Injury to—By Postponement of
Completion—Landowner—Notice—Compul-
sory Powers—Renewal of—Sufficiency of Alle-
gations as Landowners.*

The promoters' railway was originally autho-
rised in 1866, and should have been com-
pleted in 1871, but various extensions of
time had been granted by Parliament, the
period for compulsory purchase being en-
larged till June, 1875, and for construction
till 1877. The promoters now sought a
further extension of time till 1879. The
Earl of Zetland as lessor, and the iron com-
pany as lessees of minerals in lands tra-
versed by the railway, objected to so great
a prolongation of time as being detri-
mental to their respective interests. It was
also alleged that the line could be, and
ought to be, completed in a much shorter
time than that proposed by the bill. Lord
Zetland also claimed to be heard as a land-
owner against the renewal of compulsory
powers over his lands. It appeared that
under the bill further land belonging to
Lord Zetland might be taken for the pur-
poses of the line, but there was no specific
allegation to this effect in his petition :

Held, that both the petitioners were entitled to
a *locus standi*.

The *locus standi* of both petitioners was ob-
jected to on similar grounds, because (1) no pro-
vision for taking their land or for extending the
time for so doing is contained in the bill or al-
leged in the petition; (2) no rights of theirs
will be affected; (3) they have no interest in
the provisions of the bill entitling them to be
heard; (4) they have no *locus standi* according
to practice.

Round (for Lofthouse iron company) : We are
lessees of minerals in lands through which the
promoters' line passes. Under our lease and sub-
sequent agreements we are bound to pay a dead-
rent of £1,500 until the promoters' line is com-
pleted. We took our lease on the faith that the
promoters' line would be completed before July,
1873, as by means of the railway we should be
able to work the minerals and convey them to
our blast furnaces. Until we can do so we are
paying rent without receiving any return. We
submit that the promoters should be compelled
to complete their line within six months or other
reasonable time.

Mr. RICKARDS : Have you, as lessees, been
served with notice that the promoters intend to
ask for an extension of time for the taking of
your land?

Round : No. If we had known of it before,
we should have objected on S. O.

Littler, Q.C. (for Earl of Zetland) : The peti-
tioner is owner of the lands leased to the Loft-
house iron company; and for these lands, till
the promoters' line is completed, he does not re-
ceive the maximum rent. He is anxious there-
fore to force on the completion of the line
rapidly. With regard to the objection that there
is no specific statement that the petitioner's land
will be taken, the petition of James Harman
against the *Great Eastern Bill* (2 Cliff. & Steph.
16) is in point. We have received a landowners'
notice.

Saunders (for promoters) : Your lands are al-
ready bought.

Littler : You have bought a strip, but by the
bill you continue for four years the power you
had by the existing Act to take anything within
the limits of deviation.

Mr. RICKARDS : Supposing the extension of
time not to be granted, the compulsory powers
would lapse in June.

Littler : We should not object to the line
being finished, but we say—"Do not give more
time than is absolutely necessary for making the
line."

Saunders (for promoters) : The Earl of Zetland
and the Lofthouse iron company, who are in the
relation of landlord and tenant, do not petition
in the character of persons whose lands will be
taken for the purpose of the line. They petition
as people who object to an extension of time
because they will be losers of rent, in the one
case, and losers of the means of working the
minerals profitably in the other case. No lands
of the Lofthouse company can be taken inas-
much as they have none. They have only powers
under the surface.

Round : We have also rights upon the
surface.

Saunders : Not in respect of any scheduled
land. The necessary lands of the Earl of Zet-
land have been already taken and paid for. But
notices have been given him as to some outlying
portion *ex abundante cautela*.

Mr. RICKARDS : There is a power to take land
under this bill, which means over and above the
lands already purchased?

Saunders : Admitting that a notice has been
served on the Earl, and that he would be entitled
to be heard, the petition does not properly allege
the fact that he is a landowner. He merely
objects on other grounds, and tries to get in as a
landowner. In *Harman's* case there was no
decision by the Court; the *locus standi* was con-
ceded by the promoters. Both petitioners allege
that they made the lease on the faith of the
completion of our line, and are damnified by the
delay. Railways are frequently not completed
within the time originally granted, but there is
no privity of contract between the railway and
any one else on this point, and a railway com-
pany could not be sued for delay in completing
its line, and landowners are not entitled to be
heard against abandonment bills on the ground

that they will be injured by such abandonment (1 Cliff. & Steph. 22 and 28).

Mr. RICKARDS: The petitioners here say that the longer the time before completion, the greater the loss to lessor and lessee, and therefore they ask for an opportunity of saying that the time proposed is too long.

Saunders: But they ask to be entitled to say that simply because they have entered into obligations under the lease. Does that fact entitle them to be heard?

The CHAIRMAN: The *locus standi* of both the Petitioners is *Allowed*.

Agents for Petitioners (2), *Sherwood & Co.*

Agents for Petitioners (3), *Frere, Foster, & Frere.*

Agent for Bill, *Bell.*

WHITEHAVEN, OLEATOR, AND EGREMONT RAILWAY BILL.

Petition of JOHN POSTLETHWAITE.

7th June, 1875.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Railway—Landowner—Estoppel—Opposition in House of Lords—To Preamble and Clauses—Effect of, in House of Commons—Right again to Oppose Preamble and Clauses—Notwithstanding Clause obtained in Lords—Locus Limited by Consent—Agreed Clause—What Constitutes Form of Petition—Landowner not bound to Anticipate Estoppel.

The petitioner was a landowner, whose land was to be taken under the bill, and who had appeared in the House of Lords against the preamble and clauses. The Committee of that House affirmed the preamble and entered on the consideration of clauses, whereupon the petitioner proposed a clause for his own protection. The promoters tendered him one with which he was not satisfied, but which was, after much discussion, adopted by the Committee in a somewhat modified form in spite of his opposition. He now petitioned the House of Commons in the same form against preamble and clauses, but, while contending that the Court might, in their discretion, allow him an unlimited *locus standi*, though he had gone into a discussion of clauses in the Lords, he did not insist on his alleged right, but claimed to be heard upon the clause inserted by the other House affecting his property:

Held, that he was entitled to a *locus standi* against the clause in question.

(*Per Cur.*) If parties before the Committee of one House agree to abide by the decision of that Committee on a disputed point, and the Committee decide accordingly, the clause inserted by the Committee for settling the disputed point becomes an agreed clause, and the parties are estopped from objecting to it before a Committee in the second House. But, *semble*, this is not the case where, in the first House, the parties do not agree to be bound by the decision of the Committee.

The *locus standi* of the petitioner was objected to, because (1) he is not entitled to be heard against the preamble as a landowner, he having asked for and obtained a clause (sec. 8) for his protection in the Committee of the House of Lords. He is not entitled to be heard respecting any suggested alternative line or lines of railway from Mirehouse to and through the town of Whitehaven, or any other alternative line which is not comprised in the bill; (2) he is not entitled to be heard as a mineral proprietor or trader for the reason before stated, and also because he is only an individual mineral proprietor or trader, and not a representative of either of those classes; (3) he might otherwise have been entitled to be heard upon clause 5, and in favour of such amendments therein as were proposed by his counsel upon the discussion of that clause before the Committee of the House of Lords, but he has precluded himself from being heard in support of such amendments by not raising or specifying them in his petition; (4) he is not entitled to be heard against clause 13 of the bill, he having no such interest as adjoining landowner in any land affected by that clause as entitles him to be heard against it; (5) his petition does not disclose any grounds of objection to the bill upon which he can now be heard according to practice.

Salisbury (for petitioner): Mr. Postlethwaite is a landowner who appeared against the bill in the House of Lords, and according to practice the onus is on the other side to show why a landowner should not be heard.

Mr. RICKARDS: No, you are to be heard first.

Salisbury: There is no S. O. that narrows the right of a landowner to be heard against the preamble in either House, even if he has discussed clauses in one House of Parliament. Where opponents to bills have discussed clauses in one House, and they then go to the other House, and the promoters object to their being heard against the preamble, upon the ground that they have discussed clauses in the other House, no doubt that objection is held to be a good objection as a matter of discretion, but not as a matter of right.

Mr. RICKARDS: I think we have decided the same point before.

Salisbury: In the case of the *Birmingham Water Bill* (2 Cliff. & Steph. 92), you allowed the petitioners a *locus standi* against clauses though they had obtained clauses in the other house. Before the House of Lords we proposed a clause which was not accepted, but that of the promoters was inserted instead. We now claim to be allowed to show how the clause as inserted fails to benefit us, and I submit that there is nothing to prevent us from having the whole question re-argued. In the *London and North Western Bill* for the construction of a tunnel at Birkenhead, we petitioned against the preamble in the House of Lords, and our *locus standi* was objected to, because we had already discussed clauses in the Commons, but the Committee decided that we had a clear right to go against the preamble of the bill, and in the result we struck out the very power the London and North Western company had obtained from the Commons. In this case, if the promoters had accepted in the Lords the clause which Mr. Postlethwaite there proposed, he would not have been here at all. But the petitioner has been advised that the clause in the bill will deprive him of rights over his estate. Even as a question of construction the clause will not do at all in its present shape, and the petitioner being a landowner, whose property will be injuriously affected, he is entitled to be heard in the Commons against both the preamble and the clause which affects him. He is content, however, to take a limited *locus standi* against that clause.

Thomas (for promoters): In the first place we say that the petitioner cannot be heard in this house, because he took a clause in the House of Lords; and, secondly, we say, that if he claims the right to show the difference between what he proposed in the House of Lords and the clause as it now stands, he should have alleged this ground in his petition, but he has not done so. This is a case in which a man, instead of adapting his petition to circumstances, and asking for what he really wants, presents again in the House of Commons the same petition against the whole preamble as he presented in the Lords. If a man takes a clause, he is bound by it.

The CHAIRMAN: I do not think you can say that he took the clause. He fought against the clause and failed.

Thomas: On the minutes you see his counsel proposing this and proposing that. If you go into a discussion of clauses, and take the decision of the Committee, it is idle to say afterwards that you are entitled to throw all these proceedings over.

Mr. RICKARDS: If the parties had gone to the Committee and said, "We have consulted together and cannot agree upon the points of difference, but whatever the Committee says we agree to abide by," then the clause passed by the Committee would have been an agreed clause. That does not seem to be what took place here, for it appears that Mr. Salisbury was struggling against what the promoters proposed, and contending for better terms up to the last. If the clause is not wholly decided in accordance with the petitioner's claim, it is not an agreed clause.

Thomas: With regard to the second point, I

submit that the petitioner cannot be heard, has not said in his petition why he was heard, namely, because the Committee House of Lords did not give him what he for. If, instead of alleging that ground, he chooses to allege something else which he seeks to throw out the bill, he is out of court.

Mr. RICKARDS: This petition is in the form. He petitions as a landowner, and up against him an estoppel. I do not think he is bound formally to anticipate your objection in his petition. He presents the same in effect as he presented in the House of

Salisbury: The petition states "that the clauses of the said bill are objections ought to be omitted, and others affecting the petitioner require to be amended."

Mr. RICKARDS: The petitioner states he is a landowner whose property is going compulsorily taken. He objects to being taken, and he is content not to go against the preamble, which as a landowner would have been entitled to claim if had taken place elsewhere, and he is to take a *locus standi* against the clause was put in to protect him.

Salisbury: I am content with that line under the circumstances.

The CHAIRMAN: The *locus standi* Postlethwaite is Allowed against Clause

Agent for Bill, Lewin.

Agents for Petitioner, Holmes, Ainslie and White.

WORTHING GAS BILL.

Petition of the LOCAL BOARD OF HEALTH
OF THE DISTRICT OF WORTHING AND THE
WORTHING IMPROVEMENT COMMISSION

19th April, 1875.—(Before Mr. PENNEKOT
Chairman; Mr. RICKARDS; and Mr.
CARTER.)

*Practice—Gas Bill—Local Board—Improvement
Commissioners—Absence of Specific Allegations
—Functions and Jurisdiction of Petitioners
Not Stated—Injury not Specifically
S.O. 135 (As to Local Authorities).*

The petitioners described themselves in the heading of the petition as the local board of health for the district of Worthing, the West Worthing Improvement Commissioners, and the seals of each of these bodies were affixed to the petition, however, did not state their functions or jurisdiction, nor the injury which they professed to suffer, nor would be injuriously affected by the bill, nor did it contain any allegation of effect:

Held, that the petitioners were not entitled to be heard on their petition.

The *locus standi* of petitioners was objected to, because (1) the bill does not interfere with any property of either of the petitioners; (2) no statutory provisions in favour of the petitioners will be altered by the bill; (3) neither of the petitioners allege that they are injured by the bill, or (4) show that they are entitled to represent any distinct class, or (5) allege that they are gas consumers; (6) they do not petition as the municipal authority; (7) it is not shown that they or either of them are a municipal or other authority of any town injured by the bill; (8) it is not shown that Worthing will be injured by the bill within the meaning of S. O. 135; (9) the petitioners have no interest in the objects of the bill entitling them to be heard against it.

Richards, Q.C. (for petitioners): Though we do not allege that we are a local board having such and such powers, we have stated that we are the local board for Worthing and that we are the Worthing improvement commissioners, and the Court would take judicial notice that a local board has certain powers and jurisdiction.

Mr. RICKARDS: Assuming the Court to be with you on that point, is there a sufficient allegation in the petition that the locality which you represent will be injured?

Richards: We say that whereas the price of gas is limited by the Worthing Gas Act, 1868, to 5s. per 1,000 feet, the present Act proposes to raise the limitation to 7s. 6d. per 1,000, and that we object to its being so raised.

O'Hara (for promoters): The petitioners do not specifically allege damage. They cannot, therefore, be heard. (*Metropolitan District Railway Bill*, 1 Cliff. & Steph. 5.) A specific allegation is necessary under the S. O. It is not enough to put at the head of a petition that it is a petition of a local board.

The CHAIRMAN: Are we not bound to take notice of the duties of a local board?

O'Hara: They do not say how they were constituted, nor that they are a public authority. (*Bray Improvement Bill*, petition of Town Commissioners, Smeth., 174; *Great Western Railway and Bristol and Exeter, &c., Railway Bill*, petition of Corporation of Southampton, 1 Cliff. & Steph. 132.)

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Wyatt, Hoskins, and Hooker*.

Agents for Petitioners, *Burchells*.

END OF REPORTS OF 1875.

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DECIDED DURING THE SESSIONS, 1876,

BY THE

COURT OF REFERE

ON

Private Bills in Parliamen

BY

FREDERICK CLIFFORD & A. G. RICKA

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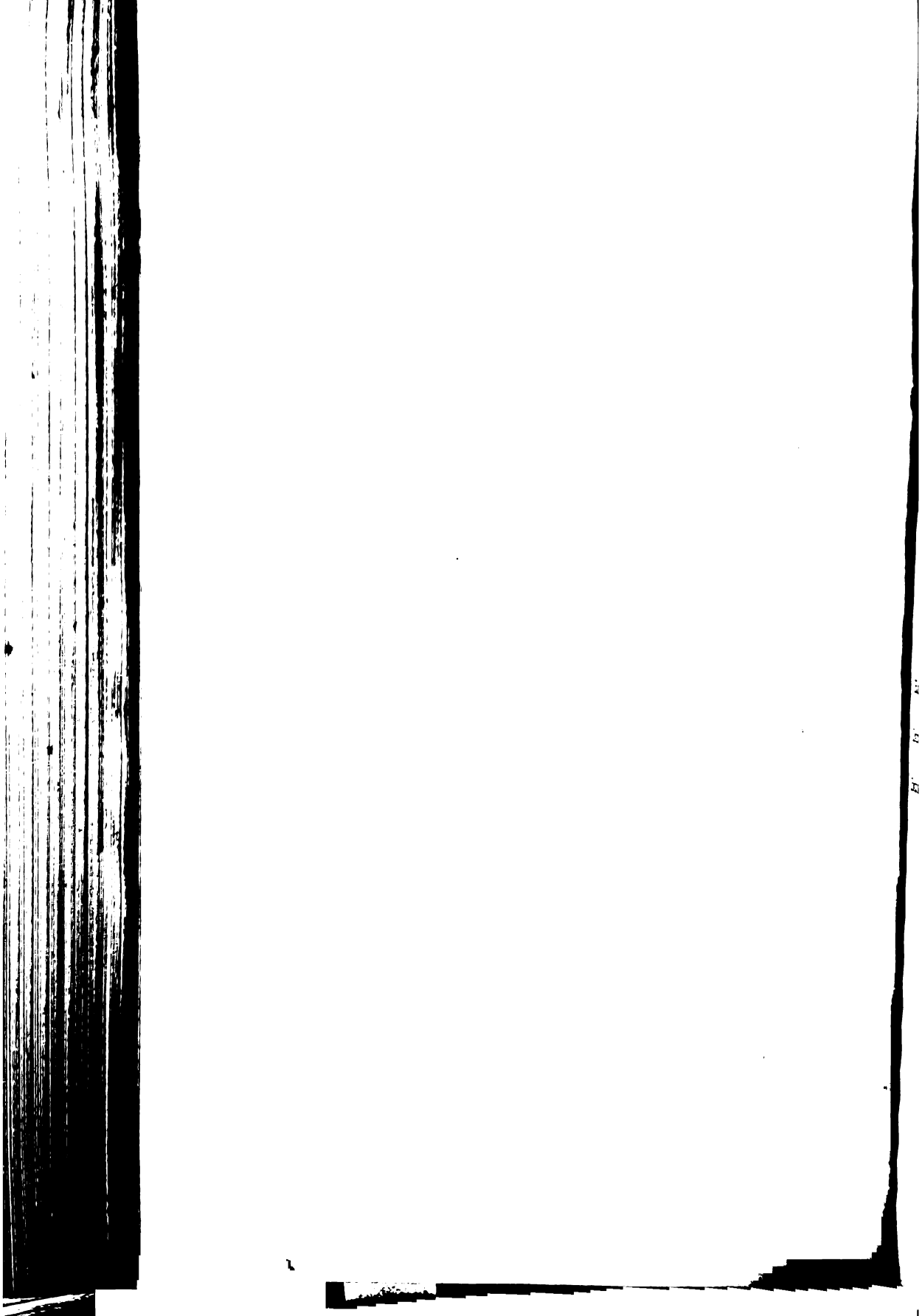
P R E F A C E .

PART II., now issued, containing the Reports of 1876, concludes Vol. I. of CLIFFORD & RICKARDS'S REPORTS OF THE DECISIONS OF THE COURT OF REFEREES IN PARLIAMENT during the Sessions 1873-6 inclusive, in continuation of the published Reports of Clifford and Stephens.

Appended to the present Part is a complete Index of the Cases reported during the four years covered by the Volume, together with a copious Index of Subjects.

Vols. I.-II., of Clifford & Stephens, contain a Treatise on the Practice of the Court of Referees, with Reports of Cases heard during the six Sessions 1867-72. Including the present Volume the Reports furnish a Record, practically complete, of the Decisions of the Court for the ten years 1867-76.

TEMPLE, *March*, 1877.



COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1876.

. Where a Standing Order is quoted or referred to, the numbering is that of the Standing Orders for the Session 1877.

BOLTON-LE-SANDS, WARTON, AND SILVERDALE RECLAMATION BILL.

Petitions of (1) JAMES S. YOUNG and OTHERS;
(2) the MIDLAND RAILWAY COMPANY.

3rd May, 1876. — (Before Mr. BRISTOWE, M.P.,
Chairman; Sir HARCOURT JOHNSTONE, M.P.;
and Mr. RICKARDS.)

Reclamation of Land—Injury to Adjacent Property by—Neighbouring Landowners, &c.—Attractiveness of Pleasure Resort Interfered with—Beauty or Salubrity of District—Interference with, no ground of Locus Standi—Public Right of Fishing—Right of Way across Sands—Harbour and Docks, Injury to by Reclamation Works—Silting-up of Channel—Double Petition by Landowner—Representation of Public, by Board of Trade—By Local Board.

A bill promoted for the purpose of reclaiming land, now covered by the sea at high tide, on the shores of a bay much resorted to by visitors was opposed (1) by 78 landowners, hotel and lodging-house keepers, tradesmen, and fishermen, in the district, who alleged that its attractiveness and salubrity would be lessened by the proposed reclamation, the value of property depreciated, and the means of livelihood of many of the petitioners seriously affected. They also complained of interference with the public right of collecting shell-fish on the shore at low water, with the right of way across the sands, and with the scour of the bay, the result apprehended being large deposits of sand and an additional disfigurement. In reply to these petitioners it was urged that, no lands of theirs being taken or directly

interfered with, they could not be heard as to the right of way, the fishery, and the scour of the bay, for these were public interests under the charge of public bodies, not of private individuals; and as to apprehended injury to the attractiveness and salubrity of the district, such allegations afforded no ground of *locus standi*. There was a landowners' petition, to which no objection was raised, and it contained substantially the same allegations, and was signed by the leading petitioners whose *locus standi* was now disputed. Petitioners (2) were a railway company who owned a harbour and docks in the bay, and complained that the proposed works of reclamation would prejudicially affect their harbour and the navigation:

Held, that upon these facts petitioners (1) were not entitled to appear, but that the petition of the railway company disclosed sufficient probability of injury to their property to give them a *locus standi* against the bill.

(*Per Cur.*) It is "settled practice" that a landowner or inhabitant cannot claim a *locus standi* on the ground that proposed works will destroy the beauty or salubrity of a place.*

This was a bill for the reclamation of land on the shores of Morecambe bay "for agricultural and other purposes." In 1874 a bill was promoted with similar objects, and became law, but on the opposition of petitioners (1) in the

* Cf. *South Eastern Railway Bill*, Petition of Messrs. Britten & Gibson, *post*, 258.

House of Lords, Parliament refused to allow the reclamation of the land over which powers were now sought. Petitioners (1) were 78 in number, Mr. J. S. Young and another petitioner being owners of considerable portions of land upon which villa residences and shops had been erected near the shore, while the other petitioners included tenants of theirs, hotel and lodging-house keepers, tradesmen, fishermen, boat and fly proprietors, with other inhabitants of the neighbourhood, and, with one exception, all the members of the board of health of Grange. They alleged that the district around Morecambe bay was largely resorted to by visitors; that most of the petitioners depended upon these visitors for a livelihood, and apprehended that the proposed embankment and works would disfigure the bay and lessen or destroy the attractiveness and salubrity of the district, thereby causing a serious depreciation in the value of property around the bay, and depriving many of the petitioners of the means of earning a livelihood. They further alleged that there were large beds of cockles, mussels, and other small shell-fish within the bay; that these had from time immemorial been gathered free of charge by the poor inhabitants; and that the proposed embankment would destroy these beds. It was also alleged that the petitioners would be deprived of their right of way over the sands to various places; that, under the bill, manufactories and noxious works might be constructed upon the land reclaimed, thereby causing an additional disfigurement to the bay besides polluting the air; that the interference with the scour and the tidal flow would cause large deposits of sand and alluvium, thus injuring the frontages and interfering with the drainage of the district; that the capital of the company was insufficient, and there was no security for the execution of the works, even if sanctioned; and that the works authorised by the previous Act had never been commenced, the promoters having been unable to raise even one-third of their capital.

The Midland railway company petitioned as owners under statute of a harbour and docks at Morecambe and of railways connected therewith, and alleged that they were advised that the proposed works, if constructed, would seriously prejudice, if not entirely destroy, the harbour and port by causing the silting-up of that portion of the bay near their harbour.

The *locus standi* of James S. Young and others was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2) they have no right of way or other rights and privileges in or over the sands sought to be reclaimed either as inhabitants or individuals; (3) they have no interest prejudicially affected by the bill, apart from the inhabitants of the district generally; (4) they do not adequately represent the inhabitants of any town or district injuriously affected by the bill, and it is not alleged that any town or district will be so affected; (5) they are not entitled to be heard on any alleged ground of injury to the public, the local board of health for the district of Grange being the proper authority to petition in respect of any matters, especially drainage, whereby their

district may be injuriously affected, and they do not petition; (6) the petitioner, J. S. Young, is not entitled to be heard, having stated in another petition identical objections to the bill, and his *locus standi* being admitted upon that petition; (7) the injuries apprehended from the proposed embankment are too problematical and remote to confer a *locus standi*, and will be caused, if at all, by the embankment already authorised by Parliament; the petitioners, therefore, complain of past legislation; (8 and 9) they do not allege any right or interest or any ground of objection entitling them to a hearing according to practice.

The *locus standi* of the Midland railway company was objected to, on grounds (1), (7), and (9), and also because (2) no right, power, privilege, or interest of theirs was taken away, interfered with, or in any way affected by the bill; (3) no railway, harbour, or property of theirs would be injuriously affected; (4) their petition was directed against interference with Morecambe bay and its navigation, but they had no rights or interests in that bay entitling them to be heard; (5) the Board of Trade, not the petitioners, were the proper guardians of the navigation of Morecambe bay; (6) the effect of the embankment would not be, as alleged, "seriously to prejudice, if not entirely to destroy, the harbour and port of Morecambe;" and (8) the petition disclosed no such case of injurious affecting as entitled the petitioners to be heard.

Little, Q.C. (for J. S. Young and others): The bill seeks to reverse the decision of the House of Lords in 1874. We represent nine-tenths of the owners, and a large number of the inhabitants of the district. As the petition was signed by every member of the local board of Grange except one, that body did not think it necessary to resort to the machinery of petitioning under the Borough Funds' Act. It is objected that Mr. Young also signs another petition; but it has been held that a petitioner may be heard on two petitions. The Act of 1874 contains a provision preventing the promoters from establishing noxious trades within certain limits; but no such provision is in this bill, which looks as if the land was to be appropriated to manufacturing purposes. Moreover, we say that the capital, &c., of the company is insufficient, and the works proposed, if not effectually carried out, may be more injurious to us than if they were completed. This is a petition from inhabitants who say that their district will be injuriously affected by these works. A reclamation scheme differs greatly from a railway, which is a public advantage, whereas this is a private speculation, likely to inflict great injury on private property—an injury for which existing legislation furnishes no remedy.

Bidder, Q.C. (for the Midland railway company): We apprehend that the effect of these works will be to silt-up the channel at present kept scoured by the outflow of the river Kent, and we shall either have our harbour destroyed or shall be involved in heavy expenses in keeping it open. Where there is any interference with a navigation, people interested in the navigation are entitled to be heard. (*North Eastern Railway Bill*, 2 Clifford & Stephens 149; *Severn Tunnel Bill*, *Ib.* 245; *Wareham Railway*

Agents for J. S. Young and Others, *Durnford & Co.*

Agents for Midland Company, *Beale, Mari- gold, & Beale.*

The *locus standi* of the petitioners was objected to, because (1) no property or rights of theirs are affected, and their docks are situate many miles above the point at which the works authorised by the bill are intended to be constructed; (2) the primary object of the bill is to

extend the time and revise statutory powers previously granted by Parliament in 1860 and 1865, no additional works of any kind being proposed, and the bill being promoted solely by, and in the interests of, the Burnham tidal harbour company, and not, as alleged by the petitioners, in the interest of the Somerset and Dorset, the London and S. Western, and Midland railway companies; (3) the Acts of 1860 and 1865 contain clauses saving the rights of the petitioners, and the bill expressly provides that such clauses shall remain in full force and effect; (4 & 5) the petitioners cannot be heard on the ground of competition, and do not show any other interests entitling them to be heard.

Saunders (for petitioners): The question is one of competition between the two docks, modified by any point which may arise as to the difference between an original bill and a revival of powers bill.

Mr. BRISTOWE: This is practically a new bill, because it is a revival of powers which have expired.

Saunders: Yes; extension of time bills have been treated as original bills even though the statutory powers have not expired.

The *CHAIRMAN*: It is quite clear that this is a new bill.

Saunders: Then the only question is whether our ownership of docks at Bridgewater entitles us to be heard upon the proposal to construct works which may injuriously affect these docks, either by stopping the navigation at the mouth of the Parratt, or by setting up a new competition. The cases of the *Bristol Port and Channel Dock* (2 Clifford & Stephens 120), and the *Bristol and Portishead Pier, &c., Docks* (Ib. 122) are in point. The promoters have done nothing to carry out the works authorised, and we say that these works are really promoted in the interests of competing railway companies.

Ball, Parliamentary Agent (for promoters): The Burnham tidal harbour company is still in existence, and has partially exercised its statutory powers by the purchase of some land. But dealing with this as a new bill, the case against it is solely one of competition, and it is competition of the most shadowy kind. We propose to embank the river Brue and form part of it into a tidal harbour, the distance between the petitioners' docks at Bridgewater and the works proposed under the bill being 11½ miles. Moreover, our tidal harbour, which will be at Highbridge, will afford no accommodation for Bridgewater traffic. The Somerset and Dorset railway is at present at Highbridge, and with regard to any traffic landed there, that railway and the Bristol and Exeter are in competition already.

Saunders: The bill authorises the promoters to agree with the Somerset and Dorset company.

Ball: In the *Wednesfield, &c.*, case (1 Clifford & Rickards 193), the Court decided that the fact that competition might arise under some agreement, which might hereafter be made, afforded no ground of *locus standi*. The proposed works at Highbridge would accommodate the traffic brought there by the Midland and the S. Western as lessees of the Somerset and Dorset, while the Bridgewater docks accommodate the traffic of the Bristol and Exeter, and would in any case con-

tinue to accommodate it. Not an ounce of that traffic would be diverted at Highbridge, for no Bridgewater man would stop his goods there; they would be sent on to Bridgewater. The competition, if any, is far too remote to give the petitioners a *locus standi*.

Locus standi Allowed.

Agents for Bill, *Toogood & Ball*.

Agents for Petitioners, *Dyson & Co.*

BURNTISLAND DIRECT MINERAL RAILWAY BILL.

Petition of (1) FORTH BRIDGE RAILWAY COMPANY.

13th March, 1876. — (Before *Mr. PEMBERTON, M.P., Chairman*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Railways—Lands Scheduled—Compulsory Powers over, possessed by Petitioners—General Landowner's Locus.

This was a bill for making a railway from Burntisland to the North British railway at Cowdenheath, with branches to various collieries in Fife. The petitioners claimed to be heard, first, on the ground of competition, and, secondly, because lands over which, under existing Acts, they had compulsory powers still unexercised, had been scheduled for the purpose of the promoters' railway. The promoters urged that the land would be only crossed by them, and that it would be perfectly feasible to make both lines:

Held, without going into the question of competition, that the petitioners were entitled, as landowners, to a general *locus standi*, which the Court had no power to limit.

The *locus standi* of the petitioners was objected to, because (1) it is not alleged, nor is it the fact, that any lands of which they are owners, lessees, or occupiers, will be taken or interfered with; (2) the railways proposed by the bill are not, as alleged, in any place laid out in a manner incompatible with the construction of the petitioners' railways; (3) no competition will arise under the bill of such a kind as to entitle them to be heard; (4) the railways of the petitioners, upon which their petition is founded, were authorised in Session 1873, but no portion thereof has been commenced, and no lands acquired by them for the purpose thereof; (5) their petition alleges nothing to entitle them to a hearing according to practice; (6) if they are entitled to be heard

at all, their *locus* should be limited to their allegations that it is proposed to take lands which the petitioners are already authorised to take, and which are necessary for the construction of their railways.

Bidder, Q.C. (for petitioners): Besides our claims to be heard on the ground of competition, the promoters have scheduled in the parish of Burntisland and other places the same lands that we are authorised to take compulsorily under our existing Acts, and in Burntisland they actually cross our land. It is a matter of importance to us that we should be able to exercise our power of deviation to the full extent. Interfering with the lands which we have scheduled undoubtedly entitles us to a general *locus standi*. (*North Wales, &c., Railway Bill*, 2 Clifford & Stephens 242; *Ipswich, &c., Railway Bill*, 1 Clifford & Rickards 84; *Evesham, Redditch, &c., Railways Bill*, *ib.* 19.) And when appearing as landowners, railway companies are uniformly allowed a general *locus standi*.

Mr. RICKARDS: Is it disputed that the promoters take some lands of the petitioners?

Cripps, Q.C. (for promoters): We go over certain roads which they have power to cross, and there is a small portion of land just adjoining these roads which we schedule and over which they have compulsory powers.

Mr. RICKARDS: If you take compulsory power over even a foot of land, which they have compulsory power to purchase, that settles the question.

Cripps (in reply): No doubt it is a well established principle that if a company has compulsory powers over land it must be regarded as being in the same position as if it had taken the land. Then comes the question whether a railway company, merely having its land crossed for the purpose of another railway and not interfered with further, it being perfectly compatible that both should be made, is entitled to go into any general matter that may be alleged in a petition and raise questions of competition and so on. As the land is merely crossed, the *locus standi* ought to be limited to getting protective clauses in respect of that crossing.

Mr. RICKARDS: It is not merely a question of crossing, it is a question of taking land. If that gives a *locus standi* at all, it gives a landowner's *locus standi*, which is a general *locus standi*, which we have no power to limit. We have decided again and again that if a railway company possesses land, which land is scheduled by another party, that railway company is to be considered as a landowner to all intents and purposes.

The CHAIRMAN: We give a general *locus standi* to the Forth Bridge railway company.

Agents for Petitioners, *Simson, Wakeford, & Simson.*

Petition of (2) OWNERS, &c., of PROPERTY in BURNTISLAND.

Practice—Owners, &c., of Lands subject to compulsory Powers—But not Actually Taken—Lands Scheduled by Second Company—Grant of Compulsory Powers—Opposition Landowners—and by Railway Company—Dors and Purchasers—Rights of, to Appeal in respect of Same Land—Landowners' Petition—Injury to Lands not Specially Alleged, But inferred from Petition—Level Crossing—Apprehended Injury from—Municipal Corporation and Landowners—Distinct Interests—Level Crossing within Limits of Burgh—Representation of Owners, &c., by Town Council

A number of owners, lessees, and occupiers of land taken and interfered with under a railway bill petitioned against the bill, of the petitioners having been served notices, and their land scheduled by promoters. It was objected that lands were already subject to compulsory powers of purchase by the Forth & Clyde railway company, who had petitioned whose *locus* had been allowed, so that if petitioners were also admitted, a *locus standi* would be granted to two sets of petitioners in respect of the same land:

Held, however, that the fact of land being already under compulsory powers of purchase did not necessarily conclude vendors as well as the intending purchasers from being heard against a bill by which similar powers were sought, and that many of the petitioners as were owners or lessees were entitled to a *locus standi*.

(*Per Cur.*) A landowner, who has compulsory powers hanging over him, is not thereby divested of his rights in the land, and may be. Where, therefore, the land has not been actually taken, he may be heard in addition to the company which has acquired these statutory powers, on his petition against a second company seeking purchase by compulsion the same land.

On a landowners' petition against a railway bill objection was taken that the petitioners did not allege injury, or in terms object to land being taken:

Held, that the fact that they described themselves as landowners was sufficient apprehension of injury being assumed to entitle their petitioning Parliament to throw the bill in the capacity of landowners.

In the same petition complaint was made that certain streets were crossed on the level by promoters' railways, but as it appeared

that all the level crossings were within the municipal limit :

Held, that such of the petitioners as were not owners or lessees could not be heard in addition to the corporation who also petitioned, and were their representatives.

The *locus standi* of petitioners (2) was objected to, because (1) their petition states that it is proposed by the bill "to take or otherwise interfere with lands and other property belonging to your petitioners or some of them," but does not specify the lands and other property thus referred to, nor the petitioners to whom the same are thus alleged to belong; (2) no injury from the taking of such lands is alleged in the petition, or even that they object to such taking of lands; (3) the petition only objects to the proposed crossing on the level of certain public streets in the burgh of Burntisland, but the provost, magistrates, and council of that burgh, who have presented a separate petition against the bill, are the only parties entitled to be heard; (4) there are no lands or other property belonging to any of the petitioners except David Young and David Gellatly, which it is proposed to take or interfere with; (5) the petition contains no allegations which entitle the petitioners to a hearing according to practice.

Shiress Will (for petitioners): The objection is that we do not specify the land which we say will be taken or injuriously affected. Two petitioners are admitted to be landowners, and a third has been served with notice and her land is adjacent. Besides those three, other petitioners are lessees, and all of them have been served with notice and their names are in the Book of Reference. It is not necessary for us specially to allege injury. (*Halifax case*, 1 Clifford & Stephens 3; *Great Eastern Railway, Harman's Petition*, 2 Clifford & Stephens 16; *Birkenhead, &c., Railway Bill, Petition 2*, 1 Clifford & Rickards 4; *Kingstown Township Bill, Ib.* 38.) With regard to the objection that the street authority represents us in respect of the level crossings, some of the proposed railways will cross on the level several of the principal streets in Burntisland, and eight of the petitioners have their places of business outside the municipal boundary, and therefore are not represented by the corporation. Besides, the provost is one of the promoters; one of the town council has also an interest in the bill, and therefore they have an interest distinct from the petitioners. The corporation have not agreed to this interference with the streets, but simply take no notice of it. (*Sheffield Water Works case*, Smethurst 79; *Liverpool Tramways case*, 1 Clifford & Stephens 142; *Aberdare Gas Bill*, 2 Clifford & Stephens 23.)

The CHAIRMAN: The roads which the railway crosses are all within the corporation limits?

Will: Yes.

Cripps, Q.C. (for promoters): The inconvenience caused by our level crossing will be infinitesimal. The point to be considered is,

where is the property so crossed? It is in the Burgh of Burntisland, and the corporation petition.

The CHAIRMAN: We need not trouble you on that point; you need only address us upon the case of those petitioners whose land is taken.

Cripps: This is not a landowners' petition; the petitioners allege no injury to their lands in any way. The mere fact of their being landowners does not in a case like this give them a *locus standi*. They merely state that by the way; not as the *raison d'être* of their petition. In that respect the case differs from those cited. My contention is illustrated by the *Halifax case*. No grievance is alleged here.

Mr. RICKARDS: Why should the petitioners state that their land is going to be taken if their whole objection is as regards interference with the streets? Suppose the petition merely alleged "That the bill proposes to take or otherwise interfere with lands and other property belonging to your petitioner, and your petitioner therefore prays that it may not pass?"

Cripps: It would be inferred that he petitioned as a landowner, but here the petitioners confine themselves to the grievance of interference with the roads, and merely put in the other statement by the way.

Mr. RICKARDS: Cannot you regard those allegations as being made by the other petitioners who are not landowners?

Cripps: No, I think not; they do not even say that they object to their land being taken.

Mr. RICKARDS: But they ask Parliament not to pass the bill.

Cripps: Two of the principal petitioners occupy the land in respect of which the Forth bridge company have got their *locus standi*, on the ground of its being already scheduled by them. You cannot have two *loci standi* with respect to the same piece of land, or two owners. The Forth bridge company have compulsory powers over this very land.

Shiress Will: They have not yet taken it.

Mr. RICKARDS: The owners are not divested of their interest in it yet and never may be.

Cripps: Assuming the principle to be established that the acquiring of compulsory powers substitutes the party acquiring those powers for the owner actually in possession, you cannot leave the vendor, who has parted with his property, the right to petition also.

The CHAIRMAN: It does not substitute the one for the other. It never has been held that the acquiring of compulsory powers by a railway company over land deprives the landowner himself of his *locus standi*.

Mr. RICKARDS: At present he is a landowner, though compulsory powers are hanging over him.

Shiress Will: The *Pontefract case* (1 Clifford & Rickards 183) is distinctly in my favour.

Cripps: That was the case of a landowner whose land was proposed to be rated, not taken.

The CHAIRMAN: The *locus standi* of so many of the Petitioners as are owners or lessees is *Allowed*; the *locus standi* of the rest of the Petitioners is *Disallowed*.

Cripps: Do I understand that the Court gives a *locus standi* to the landowners whose land is

scheduled by the Forth bridge railway company as well as to the Forth bridge company?

The CHAIRMAN: Yes, that is implied by our decision. We are decidedly of opinion that when a company have given notice to a landowner that they require his land, that land not having been actually taken, he is not deprived of his *locus standi* to appear against another company also seeking to take that land.

Cripps: The effect therefore is that there are two landowners who may appear in respect of the same land?

The CHAIRMAN: There is the landowner and the person having the right to purchase.

Agent for Petitioners, *Robertson*.

Agents for Bill, *Grahames & Wardlaw*.

CALEDONIAN RAILWAY (GRANGEMOUTH HARBOUR) BILL.

Petition of (1) WILLIAM BAIRD AND COMPANY.

13th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Single Trader—Representation of, by Traders—Raising of Rates—Distinct Interest—Agreement, Special Rights of Traders Under.

The bill was one to enable the promoters to make a wet dock, quays, and other works at Grangemouth, to improve the navigation of the river Carron by deepening it, to alter the rates leviable for the harbour and docks at Grangemouth, and for other purposes. The petitioners were a firm of considerable importance, and claimed to be heard against the levying of fresh rates on the ground that they would individually derive no benefit from the improvements proposed by the bill. They contended that their interests were sufficiently extensive to be in themselves representative and distinct from those of other traders who also petitioned, and whose *locus standi* was allowed. They further pleaded in support of their claim to be heard an agreement entered into with the promoters in 1867 for the protection of trade interests:

Held, that they had no such distinct interest as entitled them to be heard separately from the rest of the traders who had petitioned.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs are

taken or interfered with; (2 & 3) they are a single private company of traders, and their interests are not distinct from those of the traders at large who use the harbour and docks at Grangemouth, and the Forth and Clyde canal and river Carron, and who petition against the bill; (4) the undertaking by the company referred to in the petition was fulfilled by the insertion in the Act of 1867 of the clause and schedule, and the petitioners did not become entitled thereby to object to any further application to Parliament for an increase of rates, and in any event are represented in this matter by the main body of traders; (5) they cannot be heard on the ground of an agreement between the promoters and the North British railway company to which they are not parties; (6) nor are they entitled to be heard according to practice.

Pope, Q.C. (for petitioners): The petitioners are large traders on the Forth and Clyde canal, and seek to be heard against the proposal of the Caledonian company, not only to levy tolls at the harbour of Grangemouth, but to levy increased rates and tolls upon the general traffic of the Forth and Clyde canal. The objection to our being heard is that we are a single firm of traders and that there is a petition of other traders, but it has never been laid down that an individual trader is not entitled to be heard where his interests are sufficiently large to be representative or are distinct from those of his class. We are largely interested in the Clyde and Forth canal, and convey, partly in our own vessels and partly in vessels of carriers, large quantities of pig iron for shipment to the continent. In 1867, as representing trade interests, we entered into a special agreement with the promoters for the regulation of rates and tolls on the canal, and obtained the insertion of a clause in an Act of that year for keeping down tolls which they now seek to raise. We were on that occasion specially treated with and recognised as representing trade interests, and now, when we do not sign the general petition of traders, the promoters want to override that agreement and exclude us altogether. We shall derive no benefit from the proposed improvement, more especially from the dredging and deepening of the river Carron, and we maintain that the proposed raising of the rates is in direct violation of the agreement made with us in 1867. If we were not heard upon our petition, this matter could not be made evidence in support of the other traders' case, and yet a great deal might turn upon the negotiations which resulted in the insertion of the clause.

The CHAIRMAN: Was this undertaking a formal agreement?

Pope: It is in the shape of a letter from the promoters' solicitors, dated 20th February, 1867.

Venables, Q.C. (for promoters): The petitioners are private traders, and their interests are represented by the petition of traders whose *locus standi* is not objected to. They say they had an agreement with us, but that came to an end when we inserted the clause in the bill of 1867. The petitioners were not the sole authors of that clause, as the other petitioners say in their petition. The *locus standi* of the petitioners,

who were equally large traders then, was disallowed 11 years ago. (*Caledonian and Scottish Central Railway Bill*, Smethurst 126; *Great Western Railway and Swansea Canal Bill*, 2 Clifford & Stephens 247.)

The CHAIRMAN: The *locus standi* of Messrs. Baird and Co. is *Disallowed*.

Petition of (2) the GRANGEMOUTH COAL COMPANY.

Navigation, Improvements in—Single Traders—New Rates Imposed—No Benefit Derived from—Distinct Interest.

The petitioners were also a firm of single traders, and as such their *locus standi* was objected to. It was however shown that they shipped their goods at a private wharf above the part of the river Carron which was proposed to be deepened, so that they would still be obliged to use vessels of sufficiently small draught to navigate the shallow parts of the river, and while thus deriving no benefit from the proposed improvements they would be compelled to pay a rate of 4d. per ton on goods carried on the river, whereas hitherto they had navigated it entirely free of charge:

Held, that their case was sufficiently exceptional to entitle them to a separate hearing.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) they are a single private company of traders and they have no distinct interests from other traders navigating the river Carron; (3) petitions have been presented by bodies of traders interested in the navigation of the river Carron, under which petitions the expediency of sanctioning the rates proposed by the bill can be fully considered; (4) they are not entitled to be heard according to practice.

Clerk, Q.C. (for petitioners): We are subjected by the bill to a fresh rate of 4d. per ton on goods carried upon the river Carron, which it is proposed to deepen, whereas we have hitherto navigated it entirely free of charge, and in this matter our interests are really distinct. We are not represented by the rest of the body of traders, because the private wharf at which our goods are shipped is situated half-a-mile above that part of the river Carron which it is proposed to deepen, and therefore we must continue to use the same kind of vessels of shallow draught as we have hitherto used in getting to and from our wharf. This new rate of 4d. per ton on goods shipped will amount to £1,000 per annum upon our trade, and is therefore a substantial grievance. Traders, who like Messrs. Baird use

the docks, may be compensated for this additional rate, but to us, who do not use the docks, compensation is impossible.

Venables, Q.C. (for promoters): The petitioners are in the same position with all persons who use the Carron, and their case is raised by the general petition of traders. There is no proof that the petitioners are the only persons who do not use the docks; on the contrary, though they have no vessels of their own, their coals go into the docks. If the freighter is supposed to have no interest in the vessel, then they have no ground of complaint at all, but if the freighter is supposed to be interested in the vessel, then their trade goes to the docks, as their coal is nearly all shipped for export.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed*.

Petition of (3) CARRON COMPANY.

Single Traders—Carriers and Freighters—Monopoly of Carrying Traffic—Distinct Interests—S. O. 156.

These petitioners were also single traders and their claims to be heard were similar to those urged by the Grangemouth company, but in addition to the fact that their wharves were above the part of the river Carron proposed to be deepened, so that no benefit would accrue to them from the improvements contemplated by the bill, the petitioners were the owners of a large fleet of steam vessels employed in carrying goods for other firms, and they monopolised the carrying trade between London and Grangemouth. These vessels were all built to navigate the higher and shallower parts of the river, and would therefore derive no benefit if the river were deepened, whereas they would for the first time be subjected to tolls:

Held, that the petitioners' interests were sufficiently distinct to confer on them a right to a separate *locus standi*.

The *locus standi* of the petitioners was objected to, on grounds similar to those urged against petitioners (2).

Michael (for petitioners): Our case is to a certain extent that of the Grangemouth company. The bill will compel us to pay a rate to which hitherto we have never been subjected, increasing our present expenses by £5,000 per annum. But we are also the owners of a large fleet of vessels which are flat-bottomed so as to enable them to deliver cargoes two miles higher up the river than the Grangemouth company go.

and involving a new system of taxation within the whole extended area. There were two sets of petitioners, viz., (1) owners and occupiers of land outside the borough, who would be annexed thereto and become liable to new taxation under the bill. There was a sanitary authority for the district to which the outside petitioners belonged, but that body did not petition. It was objected

the borough of Chester, cannot possess a right to be heard which owners, who are also ratepayers within the borough, would not possess, both being represented by the corporation; (7) the petition was not agreed to at, or authorised by, any meeting of owners, occupiers, or ratepayers of the borough, and the petitioners do not represent those classes generally; (8) the bill was approved upon a poll by a majority of owners and ratepayers of the borough under the municipal corporations (Borough Funds) Act, 1872, and though the petitioners voted in

the minority against the bill, they cannot on that account be heard; (9) they are represented by the corporation who represent all the community within the borough; (10) they are not entitled to a hearing according to practice.

Shiress Will (for petitioners (1) & (2): Not only is the area of the borough extended by the bill, but sec. 8 extends the jurisdiction of the justices of Chesterfield to the township of Hasland and Tapton. Sec. 9 provides that the lands added are to be deemed part of the borough for all purposes, and sec. 13 extends the limits for school-board purposes. Parts of both Hasland and Tapton are included. With regard to petition (1), we allege that we shall be subjected to a new taxation by the bill, and we represent a large proportion of the inhabitants of those two townships.

The CHAIRMAN (to *Michael*): You would not contend that such of the petitioners as are owners are not entitled to be heard?

Michael (for promoters): Not if we do anything that will inflict injury upon them, or impose upon them a burden to which they are not now subjected. As it is, the taxation to which they will be subjected will be less than they now bear.

The CHAIRMAN: It will be a different taxation. You have a new taxing authority; how can you tell whether the taxation will be less or not?

Michael: One set of petitioners say one thing, and the other set say the opposite.

Mr. RICKARDS: We cannot set off one against the other. That is a matter for the Committee to deal with.

Michael: If you hold that any single owner of property has a right to be heard, because there is to be a different taxing authority, though the burden may be less, I must concede the *locus*.

Mr. RICKARDS: We have decided that point I think over and over again.

Michael: The *Cardiff Improvement Bill* (2 Clifford & Stephens 154) is the typical case, and that would be against me if it was on all fours with this. Here, however, we are going to confer a great boon, because money will be saved by the new system.

The CHAIRMAN: We think that is a matter for the Committee.

Mr. RICKARDS: It is quite notorious that the selling value of a house is very much governed by the question whether the house is or is not affected by borough taxation.

Michael: At any rate the petitioners cannot be said to represent Tapton, because there has been no public meeting held in Tapton; and the ratepayers are excluded as being entirely represented by the sanitary authority of Chesterfield union who are in favour of the bill.

Will: There is nothing to show that, as they do not petition.

Mr. RICKARDS: You are now making a distinction between the petitioning owners and ratepayers?

Will: There is no distinction between the right of owners and ratepayers to appear. The local government board have decided that the board of guardians of the union in which we are, are not our sanitary authority. For that reason they have not petitioned. This is a rate-

payers' case, and somebody should appear to represent them. In the *Leads Improvement Bill* (2 Clifford & Stephens 250), both owners and occupiers were allowed to appear. This rural sanitary authority has within its jurisdiction 12 parishes, and does not care if this little strip is taken away from it. (*St. Helen's Borough Improvement Bill*, 1 Clifford & Stephens 53.)

Mr. RICKARDS: The local authority here says nothing *pro* or *con*?

Michael: It has said nothing, and must therefore be taken to assent.

Will: It is not the local authority for Chesterfield only, but for a large district of which Hasland and Tapton form only a small part. (*Sligo Borough Improvement Bill*, 1 Clifford & Stephens 56.)

Michael: That case occurred antecedent to the passing of the Public Health Act, 1872, which does not apply to Ireland.

The CHAIRMAN: We must *Allow* the *locus standi* of ratepayers as well as owners who sign the Hasland and Tapton petition. We do not think that the rural sanitary authority sufficiently represents them for this purpose. It would not at any rate represent them for school-board purposes.

Will: Petition (2) includes both owners and ratepayers in Chesterfield.

Mr. BRISTOWE: As to ratepayers, the *West Kent Drainage* case (1 Clifford & Rickards 195) is against you.

Michael: Does the Court hold that the same principle, which as they think applies to owners without the borough, applies also to owners within the borough? Suppose a borough seeks to extend its boundary, do you hold that an owner in the borough, whether the effect may be to give him a benefit or to impose a burden upon him, has a right to a *locus standi* against the bill?

Mr. RICKARDS: Are the owners represented in the corporate body?

Michael: They are represented in it *quâ* sanitary authority, but not as the town council. If you hold that an owner of property, wherever his property is interfered with by a change in the incidence of taxation, has a right to appear, I will concede the *locus standi* of owners.

The CHAIRMAN: We think in any case in which owners are not represented in some way or other by some body they are themselves entitled to be heard. We therefore *Allow* the *locus standi* of owners within the borough.

Agents for Bill, *Simson, Wakeford & Simson*.

Agents for Petitioners, *Sherwood & Co*.

CLEATOR AND WORKINGTON JUNCTION RAILWAY BILL.

Petition of TRADERS and FREIGHTERS in the DISTRICT of the PROPOSED RAILWAY.

15th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Traders and Freighters—Favouring Competing Scheme—Inhabitants, not being Traders—Double Inquiry before Committee if Locus Standi granted—Toll Clauses.

A new line projected between C. and W. was opposed by inhabitants as well as by traders and freighters in the district, on the ground that a rival scheme proposed by the existing railway company would be more conducive to their interests, and that this scheme would be defeated if the bill passed. Their *locus standi* was objected to, on the ground that the bill would take from them no advantage they now possessed, and that their case would be fully heard upon the opposition of the existing company :

Held, that such of the petitioners as were inhabitants could not be heard, and as to the traders and freighters, that their *locus standi* must be limited to the toll clauses.

The bill proposed the construction of a new line from Cleator to Workington. The petitioners (*inter alia*) alleged that the construction of the line would be injurious to the district; that the Whitehaven, Cleator and Egremont railway company who with the London and N. Western and other companies, had efficiently supplied the wants of the district for many years past, were seeking Parliamentary powers to make certain railways through the same district; and that this scheme was better laid out, and would give greater advantages to the petitioners and the public than the railways of the promoters, which were planned to serve private interests.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be interfered with; (2) the bill will not alter or affect their status as traders and freighters, or take from them any advantages which they now possess; (3) the greater part of the petitioners are not inhabitants of the district through which the proposed railways will pass; (4) only such of the petitioners can be heard as are owners, lessees, or occupiers of property which will or may be taken for the purposes of the proposed railways; (5) the petitioners are not entitled to be heard according to practice.

Bidder, Q.C. (for promoters) : As traders and freighters, we have two substantial grounds of opposition. First, we desire to be heard to satisfy Parliament that, in the interests of the trade of the district, the extensions proposed by the existing company are preferable to the scheme in the bill, which, if sanctioned, will render those extensions impossible. Secondly, we are entitled to be heard on the question of tolls, provided the Court are satisfied that we represent the trade of the district. (1 Clifford & Stephens 49, *text*.) Here the petitioners re-

present four-fifths of the entire trade of the district—the raising and carrying of iron ore. The case of the *Widnes Railway* (1 Clifford and Rickards 57) is in point. Even if there were no other proposal before Parliament, the traders would be entitled to oppose a scheme which they believed to be badly devised, and which would prevent them hereafter from getting a better thing; *a fortiori*, if an existing company proposes an alternative scheme which will be much more in the interests of the traders.

Shrubsole, Parliamentary Agent (for bill) : The petition is signed not only by traders and freighters, but by bootmakers, shoemakers, drapers, and fishmongers, who cannot be heard.

Bidder : I do not claim a *locus standi* *quod* inhabitants.

Shrubsole : As to the traders and freighters, the passing of the bill will not deprive them of anything they now possess. All they say is, "You are coming with a railway, and we desire to show Parliament that it is inferior to one promoted by another company." Our answer is, "You have no right to encumber the case with an opposition which will be urged on your behalf by the promoters of the rival scheme." The case of the petitioners will be fully heard; and to give them a *locus standi* now will be to bring the same case before the Committee twice over. Had there been no competing line, and had the traders and freighters complained that they would be injuriously affected by the making of our railway, the case might then have been different. We do not contend that the petitioners may not be heard against the toll clauses.

Mr. RICKARDS : The traders and freighters want to back up one of these lines against the other? They do not say they will be better without this line than with it?

Bidder : In one sense we do. We say to Parliament :—"If you give us a bad line, putting aside the other line, you shut us out from the opportunity of ever getting a good one."

The CHAIRMAN : We Allow a limited *locus standi* to the Traders and Freighters against the toll clauses.

Agents for Bill, Dyson & Co.

Agent for Petitioners, Lewin.

COLNEY HATCH GAS BILL.

Petition of R. D. M. LITTLE, Q.C., and OTHERS.

29th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir H. DRUMMOND WOLFF, M.P.; and Mr. RICKARDS.)

Gas—Increase of Capital—Increase of Maximum Price—Gas Consumers—Representation of, by Local Board—Practice—Withdrawal of Petition—Time of, Immaterial.

A majority of gas consumers in a district petitioned against a bill for increasing the capital and the maximum rates of the gas company. The bill was opposed by the local board of E., whose district, it was alleged, included the company's limits of supply, and the promoters objected that the consumers were represented by the local board. It appeared, however, during the argument, that the petition of the local board had been withdrawn on the day of hearing:

Held, that the time at which a petition is withdrawn is immaterial, the Court being bound at any time to take notice of such withdrawal, even if it occurs in the room; and *locus standi* Allowed.

The object of the bill was to empower the Colney Hatch gas company to raise additional capital and for other purposes, and by one of the clauses it was proposed to increase the maximum price of gas from 5s. to 7s. 6d. The petition was signed by 192 gas consumers within the district.

The *locus standi* of the petitioners was objected to, because (1) they do not allege themselves to be injuriously affected by the bill; (2) the promoters' district of supply is within the district of the Edmonton local board, who represent the petitioners, and have petitioned against the bill; (3) the petition does not purport to have been sanctioned by the general body of consumers, or to have emanated from any public meeting of consumers; (4) some of the petitioners are not consumers of gas supplied by the promoters; (5) they cannot be heard consistently with practice.

Batten (for petitioners): I represent more than half the gas consumers and the whole of the traders in the district supplied by the company. As to the objection that we do not allege we are injuriously affected, the S. O. only requires inhabitants or local bodies to make such an allegation, whereas we are traders and consumers whose status will be injured. Besides, we make what is equivalent to such an allegation when we submit in our petition that the proposed increase in price is excessive. The necessary inference is that we are injuriously affected. Then it is objected that we are represented by the Edmonton local board, but all the petitioners are not within the district of the Edmonton local board. In many cases, gas consumers have been heard even when the local board has also been heard. (*Harrow Gas Bill*, 1 Clifford & Rickards 29; *Carmarthen Gas Bill*, *Ib.* 147.) Moreover, I am informed that the petition of the Edmonton local board has been withdrawn.

Michael (for promoters): If so, it has been withdrawn since the meeting of the Court.

Mr. RICKARDS: We are bound to take notice of the withdrawal, even if the petition were withdrawn in the room.

Michael: As the petition of the local board is withdrawn I concede the *locus standi*.

Locus standi Allowed.

Agents for Bill, *Wyatt, Hoskins, & Hooker*.

Agent for Petitioners, *Gale*.

COOMBE HILL CANAL NAVIGATION BILL.

Petition of (1) SEVERN COMMISSIONERS.

9th March, 1876.—(*Before* Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practices—Branch Canal—Unprofitable—Proposed Abandonment—Adjoining Waterway—Interest of—Diminution of Tolls—Interchange of Traffic—Canal Feeder—Link in a Chain—Insufficient Allegations.

The bill proposed to authorise the stopping-up of a short piece of canal about two miles in length, which joined the navigation of the petitioners, but it was not stated in the petition, nor did it appear, that the petitioners exercised either by statute or by virtue of any agreement or otherwise any powers over the promoters' canal. The latter served merely as a feeder to the Severn navigation, but having become unprofitable, it was proposed to abandon it and sell the land hitherto covered with water:

Held, without deciding the general question, that the petition was too vague in its allegations and did not disclose sufficient grounds for a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no property, rights, or interests of theirs are affected; (2) they have no property, rights, or interests in the canal or in its being kept open; (3) the canal does not form a link or part of a chain of inland navigation, and they are not entitled to be heard on any public grounds; (4) the injury alleged on the ground that the closing of the canal would prevent its being extended to Cheltenham does not arise on the bill, and is too remote; (5) they are not entitled to be heard on the score of competition between land and water carriage; (6) the closing of a canal such as the Coombe Hill canal was an event not contemplated or considered by the Joint Committee of both Houses in 1872, and the report of that Committee only referred to through traffic, and not

to traffic of so purely local a nature; (7) the petitioners are not entitled to be heard in respect of any diminution of their tolls which might take place by reason of the closing of the canal; (8) the petition discloses no grounds for a hearing according to practice.

Pembroke Stephens (for petitioners): The question turns on the relative position which we occupy under former Acts and have occupied hitherto, and the position which we shall occupy if this bill passes. By closing up their canal the promoters will deprive us of a source from which we now derive traffic.

The CHAIRMAN: If that view should prevail, wherever a piece of railway is proposed to be stopped up, every other railway in the kingdom which has some connection with it might claim a hearing?

Stephens: Railway abandonment might also prove injurious; but I confine my argument to waterways, to which distinct principles are applicable. We are about to lose a feeder.

Bidder, Q.C. (for promoters): The tolls on the whole of the canal are £15 a-year, so that £5 at the outside would represent the annual interest of the Severn navigation.

Mr. RICKARDS: If you could show that the working of your navigation would be prejudiced or interfered with, or that any interest which you have now in this canal would be taken from you, that would be a good ground for a *locus standi*; but your claim merely rests on this, that you are going to lose a feeder which hitherto has brought you some traffic, in which, however, you have no vested interest.

Stephens: The withdrawal of a feeder from an existing navigation has been held to be a good ground of opposition. (*Bradford Canal Bill*, 2 Clifford & Stephens 179.)

The CHAIRMAN: The petitioners there appear to have had powers over the canal, and the allegation of user was distinct. You, on the other hand, have no rights over this canal other than the public at large?

Stephens: This is one of the links in a chain of navigation. The more numerous the links, the greater the traffic, and *vice versa*.

Mr. RICKARDS: Taking away a link implies a breach of continuity. That is hardly the present case?

Stephens: Every chain must have an end link, which is here about to be cut off. The whole line of inland communication must be regarded as one, and we shall no longer be able to interchange traffic as at present if they close up this part of the water system. Our *status quo* will be interfered with. (*Hereford and Gloucester Canal Bill*, *Petition of Severn Commissioners*, 2 Clifford & Stephens 29; *Midland Railway, &c., Bill*, *ib.* 271.) Moreover, after the passing of this bill, we should still be subject under our Acts to continuing liabilities, so that our position would be altered for the worse.

Bidder: You do not allege that you will be affected by any liabilities after our canal is closed.

Stephens: We say "That the rights and interests of your petitioners and others interested in the said canal being kept open and used for the purposes of navigation would be sacri-

ficed or endangered by the proposed closing of the canal."

The CHAIRMAN: That is a general allegation, and must be read as applying to the previous allegations in the petition, which point out that the way the petitioners will be injured is by their tolls being reduced.

Stephens: There is also this consideration, that at the present moment a Coombe Hill representative is *ex officio* upon our board, and will remain there, although the reason for which he was appointed, to protect Coombe Hill interests, no longer exists.

Bidder (in reply): We have a clause dissolving the company, and after we are dissolved we can no longer elect a Severn Commissioner. The cases which have been cited are not really in point. The *Hereford and Gloucester* case was one of competition; and in the *Bradford Bill* the petitioning company not only had powers of using the canal, but actually interchanged traffic with it until closed. The petitioners here do not say that they carry an ounce of traffic or derive a sixpence from the canal, and they do not show that they interchange any traffic between the two systems. Besides, as the canal is only two miles long, if any traffic arose in the district it might still reach the petitioners. In the *Great Western Railway* case (1 Clifford & Rickards 27) the Severn Commissioners were refused a *locus standi*.

The CHAIRMAN: In this case we think the Petition does not disclose any sufficient ground for a *locus standi*.

Agent for Petitioners, G. Norton.

Petition of (2) OWNERS, LESSEES, and OCCUPIERS of LANDS, HOUSES, and other PROPERTY in the PARISHES of LEIGH, DEERHURST, and BODDINGTON.

Practice—Appear, Right to, Defined—Qualification—Solicitor—Parliamentary Agents, Roll of—Canal, Closing of—Owners, &c., of Lands near—Drainage Interfered with by—Apprehended Flooding—Loss of Benefits Derived from Canal—Access over Bridges taken away—Sale of Land now Occupied by Canal—Pre-emption Rights of Adjoining Owners to—Parishes Traversed by Canal—Right of Owners, &c., in, to Oppose Abandonment of—Abandonment of Canal and Railway, Distinction between.

A bill which provided for the closing of part of a canal was opposed by a large number of petitioners, many of whom held land either adjoining or in the immediate vicinity of the canal. The petitioners alleged that their land, which now drained into the canal, would be injuriously affected by liability to flooding, loss of drainage, and loss of exist-

ing facilities of carriage if the canal were closed, and that liabilities to maintain roads, &c., would thereby be transferred to individuals. The petitioners also sought to be heard against the pre-emption clauses, which gave to riparian owners preferential rights to purchase. It appeared also that some of the petitioners whose land abutted upon the canal had been allowed to erect wharves upon it :

Held, that a general *locus standi* must be given to those petitioners, both owners and occupiers, whose land was "in reasonable proximity" to the canal, and that, therefore, all the petitioners would be allowed to appear who held land in two parishes traversed by the canal, excluding petitioners owning or occupying land in other parishes.

A preliminary question arose in this case as to the competency of a solicitor to be heard. An appearance on the petition had been entered in the Private Bill Office, in the name of certain Parliamentary Agents. No agent appeared to support the claim, but a solicitor asked to be heard :

Held, following the decision in the case of the *Birkenhead, Chester, and North Wales Railway* (1 Clifford and Rickards 3), that the Referees can hear only parties, their counsel, or Parliamentary Agents. Thereupon the solicitor, as in the cited case, retired to sign the roll of agents, after which he was allowed to appear.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs are interfered with : (2) as landowners or occupiers of lands or houses they have no right to be heard against the bill which is for the abandonment of a canal ; (3) benefits which they derive from the canal do not entitle them to be heard ; (4) they are not entitled to be heard in respect of the preservation of any alleged right of way along or across the canal ; or (5) according to the practice of Parliament.

Brydges, solicitor, appeared for the petitioners ; but

Bidder, Q.C. (for promoters) pointed out that Mr. Brydges was neither a petitioner, nor a Parliamentary Agent, and that, according to the decision in 1 Clifford and Rickards 3, it was necessary for petitioners either to appear themselves, or by counsel, or by Parliamentary Agents. Mr. Brydges accordingly retired and signed the roll of Parliamentary Agents.

Brydges (for petitioners) : We are the owners and occupiers of property adjoining the piece of canal which is to be stopped up ; if this piece is stopped up, our property will be liable to be

flooded, and therefore we ought to be heard to protect ourselves from this injury.

The CHAIRMAN : Do you drain into the canal ?

Brydges : Yes ; into the canal and into culverts alongside of it. We want saving clauses to preserve our present means of protection from floods. We also derive great benefit from the canal as it now exists, getting our coals and heavy goods cheaper than we could if they were brought overland ; and we were allowed to erect quays and wharves on our lands adjoining the canal. We shall be deprived of these advantages if the promoters are allowed to abandon the canal. Then there ought to be clauses to insure the proper filling up and levelling of the canal, and the maintenance of bridges and roads. The 5th clause of the bill provides that if the land now covered by the canal is sold *in toto*, the adjoining owners shall have rights of pre-emption in respect of it, but there is no provision to compel the sale in lots, and some of us, if the land fails to sell, may have the nuisance of a dry ditch in front of their houses. Besides being owners and occupiers we are inhabitants, and in the *Brighton and Hove* case (1 Clifford & Rickards 30), inhabitants as well as owners of property were heard. With regard to the existing roads and bridges across the canal, the canal owners propose to relieve themselves from liability as to those roads by saying that they shall be kept up only to the extent which will be met from the proceeds of the sale of the land. In the *Midland Railway* case (3 Clifford & Stephens 108), inhabitants who complained of a road being closed were heard. If you exclude us, there is nobody here to look after the public interests. We claim to be heard against the preamble and clauses.

Bidder (in reply) : There is nothing in the petition to entitle the petitioners to be heard. Only a small number own or occupy land adjoining the canal, many of the others being 3 or 4 miles distant. At any rate their *locus standi* ought to be limited to the pre-emption clauses.

Mr. RICKARDS : In what parishes is this canal situated ?

Bidder : In Leigh and Deerpur.

Mr. RICKARDS : Then there are a great many occupiers of lands adjoining the canal ?

The CHAIRMAN : It is clear, so far as regards the actual owners of lands touching the banks, that they must be affected, and they ought to be heard on the question of how the land is to be disposed of.

Bidder : At any rate, only the owners should be heard.

Mr. RICKARDS : It is the occupier who is practically interested.

Bidder : It has been frequently decided that an owner cannot be heard against an abandonment bill.

Mr. RICKARDS : That is in the case of a railway ; but it does not hold good here. You are altering the face of the land here. You are going to take away the water and to interfere with the roads ?

Bidder : They do not say so in the petition, nor with regard to floods is there any clear allegation of injury.

The CHAIRMAN: The petition is badly drawn; but we think, at all events, so far as regards those petitioners who are owners or occupiers of lands and houses adjoining the canal, that they certainly ought to be heard. What is the greatest distance of any petitioning occupier from the canal?

Bidder: Three or four miles. If you wish to go further than the land actually abutting on the canal, you might give a *locus standi* to petitioners owning land within a certain distance of the canal—say, 100 yards.

Mr RICKARDS: We are disposed to give a general *locus standi* to all petitioners, whether owners or occupiers, who either adjoin or live in reasonable proximity to the canal; but we feel great difficulty in drawing the line.

Brydges: I am willing to leave out all the Boddington people, and confine the *locus standi* to petitioners in the parishes of Leigh and Deerhurst, through which the canal runs.

The CHAIRMAN: The *locus standi* is Disallowed, except that of Owners and Occupiers in the parishes of Leigh and Deerhurst.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Wyatt, Hoskins & Hooker.

FURNESS RAILWAY BILL.

Petition of (1) the ULVERSTON LOCAL BOARD and MILLOM LOCAL BOARD.

8th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Practice—Railway—Substituted Line—Sanitary Authorities—Owners of Roads and other Property—Allegation not Expressly Traversed—Landowners' Locus—Objections, Insufficiency of.

A general landowners' *locus standi* was claimed by two local authorities upon their joint petition against a bill to substitute a new line of railway for an existing one, the petitioners alleging that the proposed new line would interfere with public roads and other property of which they were the owners. The promoters did not, in their objections, specifically deny that the petitioners were owners, as alleged. It was argued, however, that they were not private owners, but merely persons in whom the control of the roads was vested, as the local authority, and that their claim to be heard as landowners was sufficiently met by the general objection that they had no interest in the subject-matter of the bill entitling them to be heard:

Held, that this formal objection was insufficient, and that, in the absence of a more specific traverse of their claim to be heard as landowners, the petitioners were entitled to a general *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they are not affected by the abandonment clauses of the bill, nor will the proposed substituted route be more circuitous or involve a longer mileage than the existing one, which will remain unaffected between Ulverston and Millom, and Millom and Barrow; (2) they have no property, rights, or interests in the Ulverston canal, nor do they represent the traders in it, nor will the proposed bridge over it in any way obstruct the traffic; (3) the company who are the owners of the canal have not failed, as alleged, to carry out any pledges given to the petitioners; (4) except so far as regards any interference with roads under their control and management, they have not, and do not allege any interest entitling them to be heard according to practice.

Tahourdin (for petitioners): We state in our petition that we are the local and urban sanitary authority for the Ulverston and Millom districts, having the local management and charged with the sanitary regulations thereof, and that we "are also owners of public roads and other property" in those parishes respectively "proposed to be entered upon, taken, and used for the purposes of the bill." We accordingly claim to be heard as landowners. The promoters do not deny, in their objections, that we are entitled to be heard as landowners, and as such we claim a general *locus standi*. (*North Eastern Railway Bill, Petition of Corporation of Middlesbrough, 2 Clifford & Stephens, 148.*) [*He was then stopped.*]

Pembroke Stephens (for promoters): The petitioners are owners of roads in the same sense as they are owners of other property, that is to say, as the local authority, and in that character we admit their right to be heard. They cannot, however, be private owners of public property. If they were owners of private property they should have said so. They are only entitled to be heard as the street authority, and the only injury that can be inflicted upon them is in respect of injury to the streets.

The CHAIRMAN: Might they not have other property?

Tahourdin: We say expressly that we have "other property" affected by the bill, and no objection has been taken to that.

Stephens: If the local authority have any private property they should be prepared to state what it is. According to the decisions a man cannot give himself a *locus standi* merely by saying that he is the owner of land about to be taken.

The CHAIRMAN: If they allege it, and you do not deny it, is not that enough?

Stephens: We meet their claim to a landowners' *locus standi* by saying that they have no such interest in the subject matter of the bill

as entitles them to be heard according to practice, and it is upon practice exclusively that the landowners' *locus standi* depends.

Tahourdin: That gives us no intimation upon what grounds they intend to dispute our title. It is merely the formal way of winding up objections.

The CHAIRMAN: The Court are of opinion that the allegation is not sufficiently traversed.

Locus standi Allowed.

Agents for Petitioners, *Tahourdins & Hargreaves.*

Petition of (2) TRUSTEES of the PORT, HARBOUR, and TOWN of WHITEHAVEN.

Railway—Abandonment and Substitution—Compulsory Purchase of Lands—Rival Objects—Urban Sanitary Authority—Site for Sanitary Improvement—Monies for, Already Borrowed—No Obligation to Construct—Service of Notices ex Abundanti Cautela—Town and Harbour Trustees—Interference with Streets, &c.

A bill for abandoning an authorised line of railway and for substituting a new route, was opposed by the town and harbour trustees of Whitehaven, who were the sanitary authority for the district, and who sought a landowners' *locus standi* on the ground that the promoters had served notices upon them as owners of highways, gaspipes, &c., and also on the ground that compulsory powers were sought over certain lands, still in the hands of private owners, upon which lands the trustees proposed that various sanitary improvements should be carried out, and had already borrowed money in respect of the works so contemplated. It was objected that the petitioners did not own the land in question, and were under no Parliamentary obligation to carry out any such improvements; and further that the notices relied on had only been served *ex abundanti cautela*:

Held, that the mere contemplation by a sanitary authority of improvements upon a particular site over which they possessed no statutory powers, gave them no claim to be heard against a bill proposing to acquire such site, but that the petitioners were entitled to a limited *locus* against so much of the bill as authorised interference with roads and streets of which they had the control.

The *locus standi* of the petitioners was objected to, because (1) they are not the owners, lessees, or occupiers of any lands or buildings proposed to be taken by the bill, and their desire to become so is not sufficient; (2) it is not proposed, as alleged, to alter or divert any streets or roads of which they are the owners; (3) they are not entitled to be heard against the abandonment clauses of the bill, nor will the proposed new route to and from Whitehaven be more circuitous or expensive than the existing one; (4) they have no interest in the bill entitling them to be heard according to practice.

McIntyre, Q.C. (for petitioners): We are, under various Acts of Parliament, the body having the local government of the port, harbour, and town of Whitehaven, the urban authority having the control and management of the streets, and having also charge of the sanitary interests of the whole of the town and district. Our objection to the bill rests mainly on this ground, that the promoters seek to interfere with certain roads and public highways within the town of Whitehaven, and to take 12 acres of land situated in the heart of the town, which, if taken, must deprive us of the power of carrying out improvements, in respect of which we have borrowed money. In no less than eleven cases notices have been served on us by the promoters, as owners of public highways, sewers, gas and water pipes, &c. If we are owners for any of these purposes, we are landowners for all purposes, and we have, accordingly, a general *locus standi*.

The CHAIRMAN: With respect to the 12 acres of land, the site upon which you say you are desirous of carrying out improvements, are you compelled to carry these out by Act of Parliament?

McIntyre: Not these particular improvements, or upon these particular lands; but we have borrowed money for the purpose of carrying out the improvements contemplated. In the case of the *East London Railway Bill* (Smith 171), the *locus standi* of the district board, as representing the inhabitants, was not resisted.

Pembroke Stephens (for promoters): Notices are frequently served *ex abundanti cautela*, as they were in this case. As regards the 12 acres which we do propose to take, the Whitehaven trustees have no rights or powers affecting that piece of ground.

The CHAIRMAN: You need not trouble yourself upon that point. But as regards the streets and roads, you deny that you interfere with them?

Stephens: We deny any general interference with their property. If they can put their finger upon any clause in the bill affecting their streets, we are willing that, as the street authority, they should have a *locus standi* against that clause, but not that they should ramble up and down the whole bill.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*, except against so much of clauses 12 and 19 as interferes with the streets or roads within the district of the Petitioners, and so much of the preamble as relates thereto.

Agent for Petitioners, *Lewin.*

Petition of (3) LOCAL BOARD of DALTON.

Railway—Local Board—Claim to Represent Interests of Traders, &c.—Road Narrowed by Railway Bridge—Point Immediately Outside Petitioners' District—Alleged Injury to Road Within.

A bill for abandoning an existing line of railway and substituting another was opposed by a local board, who claimed to be heard in the absence of petitioning traders, &c., as representing local interests. They alleged that their existing railway accommodation would be deteriorated, and also that a road, part of which lay within their district, would be permanently narrowed by the placing of a proposed railway bridge at a point just beyond their jurisdiction. It was objected (and the map showed) that no practical difference in the railway accommodation of the district was made by the substituted line, and as regards the bridge, that the local board in whose district that portion of the road lay were consenting parties :

Held, that the petitioners were not entitled to a *locus standi* upon either ground.

The *locus standi* of the petitioners was objected to, upon the grounds urged in objection (1) to the first petition, and also because the petitioners would sustain no damage during the construction of the proposed line, inasmuch as the company were bound not to abandon the existing line until the completion of the line proposed to be substituted for it; (2) the roads referred to in the petition were not under the control of the petitioners, but of another body which had assented to the proposed works, and the petitioners were only affected (if at all) by the works in the same manner as the rest of the public generally; (3) they alleged no such interest in the subject-matter of the bill as entitled them to be heard according to practice.

Pember, Q.C. (for petitioners) : Our objection to the bill is twofold—first, that it will diminish the present railway accommodation possessed by Dalton, a township with 7,000 inhabitants, and, secondly, that a certain road is to be crossed by a bridge, with a span of less than 20 feet, which will prevent that road from ever being widened hereafter, the necessity for widening it being imminent. Although the road at the point where the bridge crosses is not within our jurisdiction, it forms part of the line of road which is, and if you create a narrow neck on any part of a line of communication, you create an inconvenience which extends to the whole line. A road running through a district must be regarded as a whole. (*Glasgow and Renfrew Bridge, &c., Roads Bill, Petition of Corporation*

of Glasgow, 2 Clifford & Stephens 215.) With respect to the first point, the effect of the bill will be to place Dalton on a branch instead of a through line. There is no petition here from traders or inhabitants, and we, as the local board, occupy the same position which it was contemplated the municipal or other authority should occupy in representing the interests of its district under S. O. 134. In the *Great Eastern Railway* case (1 Clifford & Stephens 70) the corporation of Norwich were allowed to appear as well as the merchants; and in the *East London* case (Smeth. 171), the vestry were heard as representing the inhabitants. With regard to our second allegation, the road at the point where it is proposed to be crossed can be widened under the Highway Act, but, if once by the authority of Parliament, the abutments of a railway bridge are put across the road they are there for ever.

Pembroke Stephens (for promoters) : The map disposes of any supposed injury to the petitioners arising from the substituted line. The *Renfrew Roads* case was not on all fours with this. Here the only injury apprehended is that the road will be narrowed; there the proposal was to continue the trust and the power of charging toll for 21 years longer to the prejudice of the interests of the inhabitants of Glasgow. A road passing into two or more districts is not necessarily regarded as a whole. If it were so, the trustees, or road authorities interested in the successive portions of a road, continued to any length, would be entitled to be heard, *ad infinitum*. (*Glasgow and Kilmarnock Railway Bill, Petition of the Govan Trustees, 2 Clifford & Stephens 261.*)

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Toogood & Ball.*

GREAT SOUTHERN AND WESTERN RAILWAY BILL.

Petition of JAMES MARTIN.

27th March, 1876.—(*Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Railway—Extension of Time—Revival of Powers of Construction—Landowner—Compulsory Purchase—Notice to Treat—Practice in Ireland—Arbitration—Deposit of Money—Appeal to Court of Queen's Bench—Change of Status—Creditor—Tenure of Land by Railway Company—S. O. 11—Notice Under—Railways Clauses Act, 1863 (Part II.)—Additional Compensation Under—How far Obtainable.

This was a bill to revive Parliamentary powers granted in 1872, and since expired, for the

construction of a railway connecting the Great Southern and Western railway with the North Wall, Dublin. The petitioner was a landowner, part of whose land was required for the construction of the railway, and who had been served, under the Act of 1872, with what, in Ireland, is equivalent to notice to treat. He now maintained that, upon the expiration of the time for construction granted in 1872, he was restored to the position which he occupied previously to the introduction of that Act, the company being only entitled to hold his land for the purposes of a railway which they no longer had power to make, and hence that he was entitled to oppose the bill as one imposing on him an entirely new obligation. The promoters contended that, although the transfer of the land to them had not been formally completed, the price had been fixed (subject to appeal) and the purchase-money lodged in Court, so that the land was no longer the petitioner's, but their own, and he merely occupied the position of a creditor of the company. The petitioner also claimed to be heard under S. O. 11, and on account of the omission from the bill of Part II. of the Railways Clauses Act, 1863, which gives to landowners additional compensation for extension of time:

Held, that the petitioner was not entitled to a *locus standi* on any of the grounds urged, the legal interest in the land having passed from him to the company.

The *locus standi* of the petitioner was objected to, because (1) no lands or houses of his are proposed to be taken by the bill; (2) he is not entitled to be heard against the extension or revival of time for completing the railway; (3) his rights and remedies as a creditor of the company are unaffected; (4) there is no allegation on which he can be heard according to practice.

Pembroke Stephens (for petitioner): The petitioner is a large landowner at, and with other members of his family carried on business extensively as a merchant, shipowner and trader upon, the North Wall, Dublin. He alleges that the powers granted by the Act of 1872, which was jointly promoted by the London and N. Western and Gt. Southern and Western (of Ireland) companies for the construction of this railway, connecting the quays at Dublin with the main line of the Gt. Southern and Western railway, have not been carried out, or have only been partially carried out, and as far as they were unexercised have now absolutely expired.

Land at the North Wall from its proximity to the docks and mouth of the harbour, as well as from its limited area, is of great and yearly increasing value, and hence is much coveted by railway companies. The powers in question ceased on the 25th July, 1875, and this bill accordingly is for their revival, and not merely for their extension. Mr. Martin holds that no further powers affecting the lands ought to be granted without his full assent and concurrence, but that the promoters should be left to their legal remedies (if any). As matters stand, the railway company are no longer in a position to do him an injury, either as to the lands affected by the Act of 1872, or the residue of his property, but this bill if passed will change his position for the worse, and do him fresh and serious injury. The promoters obtained powers over his lands for the purpose of making a railway. The power to make that railway has lapsed, and the company have no right to take or hold the land for any other purpose; so that in effect if not in words their powers of compulsory purchase over his lands do not at present exist, but will be revived if this bill passes. This is the 13th Session in which powers affecting these particular lands of Mr. Martin have been sought from Parliament in railway bills. Quite recently we have ascertained that the railway company have been constructing works, notwithstanding that their powers have expired—an irregularity which will be cured if this bill passes.

Mr. RICKARDS: I do not at present see what Mr. Martin's grievance is?

Stephens: He complains of the proposed extension of time and revival of powers; and in connection with this subject he prays in aid the considerations arising under S. O. 11. (1 Clifford & Stephens 31, *text*.)

Mr. RICKARDS: Have you been served with notice in respect of this extension of time?

Clerk, Q.C. (for promoters): We are not required to do so, being in possession of the land.

Stephens: The bill does not incorporate Part II. of the Railways' Clauses Act, 1863, giving compensation for additional damage caused by extension of time. We have not received a shilling yet in respect of the land, and there is an appeal pending in the Court of Queen's Bench. The *West Drayton* decision (1 Clifford & Stephens 29) is in our favour.

Mr. RICKARDS: You do not cite any case in which the revival of powers for completing a line has been held to give a landowner a *locus standi*?

Stephens: I do not know of any case distinguishing the revival of powers of completing a line from renewed powers of compulsory purchase, which certainly would give a *locus*. (*Dublin, Wicklow, and Wexford Railway Bill, Petition of Hon. E. Geraldine D. Morgan*, 1 Clifford & Stephens 35.) Here the compulsory powers and the time for construction run together and expire together, so that the case is a peculiar one.

Clerk (in reply): No injury is inflicted on the petitioner by the extension of time, for the land is already ours. According to all principle, a landowner who has parted with all legal title to his land, on receiving a notice to treat, or its

equivalent, becomes a mere creditor of the company, and thenceforth has no right to be heard in respect of extension of time, whether for taking the land or completing the works. In this case, formal notice has been given to the petitioner according to the practice in Ireland, and he himself attended before the arbitrator. By two successive awards the price was fixed, the money has been lodged, and it is the petitioner's own fault if he has not received it. All that the Court of Queen's Bench, to which he has appealed, can decide is the question of value. It will not give him back his land. If the ownership of the land had not been changed it would be a different matter, because then we should be seeking power to make works upon his land, instead of our own. But a former landowner is never heard. It is erroneous to suppose that a landowner, situated like Mr. Martin, must be served under the S. O. with fresh notice of proposed extension of time; but if such were the case, his remedy would have been before the Examiner, not in this Court.

Stephens: The bill does not merely extend, but revives powers.

Clerk: If it were an entirely new bill you would still have no right to be heard, having parted with the legal ownership.

Mr. RICKARDS: The power sought is that of completing works on land, which was the land of the petitioner, but is now that of the company?

Stephens: There still remains the point of increased compensation for delay. By the omission of Part II. of the Railways Clauses Act, 1863, we are deprived of our right to additional compensation for extension of time, and for that compensation, among other things, we are appealing to the Court of Queen's Bench.

Mr. RICKARDS: Could the Court of Queen's Bench look at the matter in any other light than the arbitrator did? Surely you are too late for that now. The Court can only deal with what is before them already, and not with anything that has since occurred?

Stephens: If the award of the arbitrator does not give us all that the general law would entitle us to, we ought to have the opportunity of getting it. Moreover, if the railway is not made, the land in a certain time must revert to Mr. Martin. Without this bill the works cannot be completed.

The CHAIRMAN (after deliberation): The *locus standi* is *Disallowed*.

Agent for Petitioner, *Bell*.

Agents for Bill, *Sherwood & Co.*

GREAT WESTERN RAILWAY BILL.

Petition of (1) the DUKE of BEAUFORT.

29th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir H. DRUMMOND WOLFE, M.P.; and Mr. RICKARDS.)

Railway—Extension of Time for Constructing—Omnibus Bill—Owners of Minerals under Railway—Right of, to General Locus.

This was an omnibus bill which proposed *inter alia* to extend the time for the construction of a railway authorised under an Act of 1872, and also to take further powers with reference to the acquisition of minerals, the property of the petitioner, lying under the promoters' railway. The promoters objected, first, to the *locus standi* of the petitioner *in toto*, and, secondly, that if he were entitled to be heard, his right only extended to those parts of the bill which authorised the taking of the minerals:

Held, however, that he was entitled to a general landowner's *locus standi*.

(*Per Cur.*) The owner of minerals proposed to be taken compulsorily under a bill is in the same position as a landowner whose land is sought to be taken, and is for all purposes of *locus standi* a landowner.

The *locus standi* of the petitioner was objected to, because (1) the revival and extension of powers for the compulsory purchase of lands proposed under the bill do not affect lands in which he is interested in such a way as to entitle him to be heard, or any agreements made with him, or any rights or remedies thereunder; (2) he cannot be heard against the extension of time for completing the railways; (3) he does not allege in his petition that any lands of his will be taken, or that he is entitled to be heard as a landowner; or (4) allege any grounds entitling him to be heard according to practice.

Granville Somerset, Q.C. (for petitioner): Besides containing powers to extend the time for the completion of the railway authorised by the Act of 1872, the bill provides for a further acquisition of minerals lying under the railways of the company. We are the owners of minerals underneath those railways; independently of protecting clauses in the Act of 1872, the minerals were secured to us by agreements, and we claim a general landowner's *locus standi*. (*West Houghton Gas Bill*, 2 Clifford and Stephens 100.)

Saunders (for promoters): That was a case of interference with the sub-soil. Minerals and lands are not on the same footing. It has always been held that it is not necessary to reference the owner of the mines so long as the owner of the land is referenced. At any rate, the petitioner's *locus* should be confined to those parts of the bill which deal with the taking of the minerals.

The CHAIRMAN: We think that the owner of minerals sought to be taken compulsorily by a railway company is in the same position as a

landowner whose land is sought to be taken, and the same consequences follow.

Locus standi Allowed.

Agent for Petitioner, *Bell.*

Petition of (2) the LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railways—Connection of Systems—Interchange of Traffic—Point of Interchange Altered—Access of Petitioners to Present Point—Exclusion from Proposed Point of Interchange—Diversion of Traffic—Change of Status of Railway Company.

A bill was promoted by the Great Western railway company for making (*inter alia*) a short spur at a certain point of the Monmouthshire line, which was worked by them under agreement. The bill was opposed by the London and North Western railway company (who had running powers over the Monmouthshire line), on the ground that, whereas at the present time they received traffic from certain Welsh lines by means of the Monmouthshire line at two stations in Pontypool, to which they had access in common with the Monmouthshire and the Great Western companies, the spur proposed by the bill would obviate the necessity of the present traffic passing over the Monmouthshire line into the two stations at Pontypool, to which the London and North Western had access, and would carry that traffic into a new station from which the London and North Western would be excluded; so that, whilst at present the Monmouthshire line was a feeder to both the London and North Western and the Great Western systems by carrying traffic from the Welsh railways into Pontypool, under the bill that traffic would not come over the Monmouthshire line to Pontypool at all, but would be diverted from the Monmouthshire and carried by means of the proposed connecting line to a new station to be called High Street station, where it would be received by the Great Western only. It was argued on behalf of the promoters that running powers over the Monmouthshire line did not give the petitioners a right to be heard against a junction of that line at a fresh point with a

third railway, and that their access to the existing point of interchange would not be interfered with:

Held, however, that the bill involved such an alteration in the status of the petitioners as entitled them to a limited *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, houses, or property of theirs are affected by the bill, nor are any running powers or facilities sought upon or across any railway of theirs; (2) their rights and interests under the agreement of 19th August, 1863, referred to in the petition or in respect of the use of the Mill Street station, will not be so altered or affected (if at all) as to entitle them to be heard; (4) the running powers referred to in the petition will not be prejudiced or affected by the bill; (5) the vesting in the promoters of the Pontypool, Caerleon, and Newport railways will not have the effect stated in the petition, and the petitioners have no interest in the said railway or in the traffic arising thereon, which will be so affected as to entitle them to be heard; (6) any interests which they have in the matter referred to in the petition are sufficiently protected by the Regulation of Railways Act, 1873; (7) they allege no grounds for a hearing according to practice.

Pope, Q.C. (for petitioners): At Newport the London and North Western railway company's access from the north is by their own line as far as Hereford, they being joint owners of the Shrewsbury and Hereford line. Then they come down over the Newport, Abergareeny, and Hereford through Pontypool, and there form a junction with the Monmouthshire, over which they also have running powers to Mill Street station and Duke Street station upon the Monmouthshire lines. At those stations an interchange of traffic between the London and North Western system and the Monmouthshire and the Great Western systems over the Monmouthshire takes place. The first line which is mentioned in the bill and the petition is a little spur which is proposed to be constructed by the promoters from the Monmouthshire line to join the line from Pontypool through Caerleon to Newport; so that it will enable the Monmouthshire or the Great Western railway, who are now by agreement working the Monmouthshire, to divert traffic from the Monmouthshire which is now a feeder to both systems—the London and North Western railway, and the Great Western railway—round the spur on to the Caerleon and Newport, and over the Great Western into the High Street station, to which at present the London and North Western have no access. Thus the Great Western would be able to take the traffic through High Street station direct upon their own or the Monmouthshire lines, avoiding the only stations at Newport where the London and North Western can interchange traffic with them. We are at Mill Street and Duke Street, and so are they. The moment they make it their interest, or give themselves the power, to divert all the Mon-

monmouthshire traffic into the High Street station where the London and North Western is not, they monopolise to themselves the interchange of traffic with the Monmouthshire, which at present is interchanged at Mill Street and Duke Street stations. The question is whether we have not the right to be heard to say, that, as they are going to remove their interchanging point from the stations where we are to a station where we are not, they ought to let us be at the place where the interchange takes place.

Saunders (for promoters): With regard to the junction between the Monmouthshire and the Great Western lines at Newport, the position of the London and North Western company is this: they are not the owners of a mile of railway in that district, and they are only at Newport by running powers over the Monmouthshire company's lines. They say that, having got running powers into the Mill Street station of the Monmouthshire company, the scheme now proposed will interpose obstacles in the way of their exchanging traffic with the Great Western and with the Monmouthshire companies, but they must prove that, in some way, the bill will injure their position, and this they have not done. They say that by the user of the railways leading to the High Street station it would be our interest to take traffic which now goes to Mill Street station, and transfer it to the High Street station. That question does not arise under the bill, nor, as a matter of fact, will it be the case. As regards certain local traffic, it would be convenient for us to take it to High Street station, and there deliver it, but that does not injure the petitioners. We do not take away their rights of using the Mill Street station; the interchange of traffic will not be interfered with. We have traffic arrangements with the London and North Western company under the Act of 1863, and we are bound to give facilities for their traffic, and to exchange traffic with them. That state of affairs will continue after this line is made, and, moreover, their line into Mill Street is not the line of the Great Western, but the line of the Monmouthshire company. The proposal is to make a line which will be an improvement in the means of communication between the lines of the Great Western and the Monmouthshire. The London and North Western have only running powers over the Monmouthshire to this station at Mill Street; and, according to the decisions, a right of running over a line does not give a right to be heard against a junction with the line run over.

CHAIRMAN: With reference to High Street station the *locus standi* of the London and North Western Railway Company is *Allowed*, limited, however, to the clauses and so much of the preamble as relates thereto.

Agent for Petitioners, *Roberts*.

Petition of (3) the **SIRHOWY RAILWAY COMPANY.**

Railway—Acquisition of Horse Tramway by—Working of by Locomotives—Apprehended, though not Authorised—Statutory Powers for,

how far necessary—Railway Rates to be Leviable—Competition—New form of—Created with Existing Railway.

The promoters sought, *inter alia*, powers to purchase a tramway, called Hall's tramway, for the purpose of making it a part of their undertaking. The petitioners objected that this scheme was practically identical with one introduced by the promoters in the previous Session and rejected by Parliament. The tramway was already connected with the Monmouthshire line, which was worked by the promoters, and it ran on one side of a valley on the opposite side of which was the petitioners' railway, and therefore was in direct competition with it. This tramway had hitherto only been worked by horse-power; but, inasmuch as the promoters took power under the bill to charge the same rates upon it as on their own railway, the petitioners alleged that the use of locomotives must be intended, and that thereby an entirely new form of competition would be created. On behalf of the promoters, it was argued that the bill would confer no powers to run locomotives upon the tramway; but it was answered that if once the promoters became possessed of the tramway, no statutory powers would be required for that purpose:

Held, that the petitioners were entitled to be heard against the clause authorising the acquisition of the tramway by the promoters, and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to, because (1 & 2) they have no rights or interests in or over Hall's tramroad which entitle them to be heard against the acquisition thereof by the promoters, and this is the only portion of the bill against which the petition is directed; (3) they will not be materially injured by any part of the bill; (4) no new competition or interference with existing competition will be created; (5) they cannot be heard according to practice.

Round (for petitioners): By a bill of last year the Great Western company proposed a line terminating by a junction with Hall's tramroad, which line was thrown out on our opposition; and we say that by this bill we should be injured in the same manner as we should have been injured if that line had been authorised. By clause 54 the Great Western seek power among other things to purchase or lease Hall's tramroad, which will henceforth form part of their undertaking. Hall's tramroad is in

direct competition with our railway, and it runs on the hill on one side of a valley, our railway running on the other. Hall's tramway eventually forms a junction with the undertaking of the Monmouthshire company, which is worked under agreement by the Great Western, by whose railway access is obtained for the traffic conveyed by the tramway to Newport. It is at present only worked by horse-power, and cannot without alteration (which the present proprietors do not contemplate) be worked by locomotive engines; but should it pass into the promoters' hands, it would be for the express purpose of adapting it for general traffic, so as to form a portion of their undertaking.

The CHAIRMAN: Is the scheme to convert Hall's tramway into a railway?

Saunders (for promoters): No; only to vest it in the Great Western—it is simply a feeder, and a tramway worked by horse-power.

Round: If the promoters only wanted to keep it as a tramway they would not want statutory powers for that. They take powers to charge the same tolls upon Hall's tramway as they now charge upon their railway. The result will be that they will be able to divert our present traffic from us, and will not merely improve existing competition, but will create a new competition.

Saunders: There is no power in the bill to turn Hall's tramway into a locomotive line. We propose to vest it in us, but it will still be worked as a tramway.

The CHAIRMAN: Would you require Parliamentary powers to make it a locomotive line?

Saunders: It is not a line that locomotives could run over. The curves would not admit of locomotives. There would be that engineering difficulty if there were no legal difficulty.

The CHAIRMAN: You do not require Parliamentary powers to run over your own line.

Saunders: Hall's tramway crosses the Great Western now upon the level, and a junction might be made without any Parliamentary powers.

The CHAIRMAN: The *locus standi* of the Sirhowy railway company is *Allowed* against clause 54, and so much of the preamble as relates thereto.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Roberts.*

GREAT WESTERN, AND BRISTOL AND EXETER RAILWAY COMPANIES' BILL.

Petition of the CORPORATION OF BRISTOL and OTHERS.

15th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Amalgamation of Railways—Railway and Docks—One Undertaking—Worked by Separate Capital—Common Seal—Municipal Corpora-

tion, Owning Part of Dock Undertaking—Dock and Railway Shareholders, Distinct Interests of, upon Amalgamation Bill—Individual, not being Preference, Shareholders—Right of to Appear, Apart from Common Seal—Or from Class Interests—Baird's Case Considered.

This was a bill for the purpose of amalgamating the Bristol and Exeter and the Great Western railway companies. The Bristol and Exeter company worked under agreement the undertaking of the Portishead pier and railway company, which would be absorbed into the undertaking of the amalgamated companies. Besides their railway, the Portishead pier and railway company also possessed docks at Portishead, which had been made under a separate Act obtained by this company, and were moreover built and worked by means of a separate capital, but under the same common seal. The corporation of Bristol, having subscribed a large amount of this separate capital, were part owners of the dock undertaking, with powers, under certain conditions, to purchase the whole; and they petitioned against the bill in common with certain other directors and shareholders of the dock undertaking. The promoters objected that the petitioners could not be heard, because (1) the Portishead pier and railway company had petitioned, and their right to appear was conceded, but the dock undertaking was included in the pier and railway undertaking and incorporated under one common seal, and could not therefore be heard on a separate petition; (2) if the dock undertaking were not so included, the petition was not the petition of the dock undertaking generally, but only of a few individual shareholders in it:

Held, that as the dock undertaking was authorised by a separate Act, and carried out by means of a separate capital, the petitioners, although not as in *Baird's case* preference shareholders, had interests distinct from those of the shareholders in the pier and railway undertaking, and were therefore entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they are, and allege themselves to be, shareholders in the Portishead dock undertaking, which forms part of the under-

taking of the Bristol and Portishead pier and railway company, and they have no interests as such shareholders distinct from those of the said company who represent them, and who have petitioned under their common seal; (2) all agreements and statutory obligations binding on the Bristol and Exeter railway company are by the bill expressly made binding on the amalgamated company; (3) no such competition will be created as entitles them to be heard; (4) all questions as to the affording or withholding of proper facilities are delegated to the Railway Commissioners, and can and would be dealt with by them; (5) the petitioners cannot, according to practice, be heard against the apprehended diversion of traffic; (6) the bill contains no provisions whereby any tolls, &c., on any part of the undertaking of either of the two companies can be increased; (7) the petition discloses no ground for a hearing according to practice.

Bidder, Q.C. (for petitioners): The question is whether the petitioners have interests distinct from the company of which they are constituents. The petitioners are (1) the corporation of Bristol under their common seal, who are part owners of Portishead dock undertaking, and (2) certain shareholders in the undertaking and directors appointed to manage it. The Portishead pier and railway company was incorporated under an Act of 1863, which authorised an agreement with the Bristol and Exeter company that they should work the railway, determine the time and speed of the trains, and, within certain limits, fix the tolls. By the Portishead Docks' Act, 1871, the corporation of Bristol obtained power to contribute towards the cost of the proposed docks, and also to purchase the undertaking. Sec. 54 authorised the company to raise additional capital, and sec. 62 enacted "that the share and loan capital authorised by the Act might, and, if the corporation subscribed to the undertaking, should be a separate capital, applicable only to the purposes of the Act, and to no other purpose, and that the holders of that separate capital alone should be interested in the revenues arising from the undertakings by that Act authorised, and that the moneys to be thereafter borrowed, or debenture stock to be thereafter created, under the powers of the Acts of 1863 and 1864, should not be a charge on the undertaking by that Act authorised, and that the holders of the share and loan capital authorised by that Act, if a separate capital, should not be interested in the revenues arising from the existing or already authorised undertaking of the company." The purposes of the Act of 1871 were exclusively those of making docks. Provision was also made by the same Act for the appointment by the corporation, in the event of their subscribing, of a certain number of directors to represent them. The corporation have since then, and in accordance with that Act, subscribed £100,000 to the dock undertaking, and the share capital held by us, and the other shareholders of the undertaking, is now a separate capital, and we are not as such shareholders interested in the revenues arising from the undertakings of the company under the Acts of 1863 and 1866. Our interests are, therefore,

distinct from the general interests of the Portishead company. This is a case of two independent companies under the shadow of one seal. We receive the revenues of the dock undertaking only, and the general shareholders of the company receive the revenues of the railway and pier undertaking. It does not matter to the railway shareholders what becomes of the dock except so far as indirectly it affects the railway. *Per contra*, the dock shareholders are only interested indirectly in the railway. We own more than one-half of the capital of the dock undertaking, and represent amongst other interests the maritime interests of Bristol. The sole means of communication between the Portishead docks, the city of Bristol, and the main lines of railway meeting at Bristol joint station are given by the Portishead railway, which is worked by the Bristol and Exeter, by this bill proposed to be amalgamated with the Great Western, who will therefore take the place of the former company under the agreement of 1863. We object to this amalgamation without the conditions which we think should be contained in the bill.

Pope, Q.C. (for promoters): We concede that the undertaking, in which the corporation are shareholders, being part of the Portishead undertaking, is unquestionably interested in the amalgamation, and is entitled to be heard; but we say, first, that this separate undertaking is included in the whole; and, then we say, that if it is not, this is a petition not of the separate interest, but simply of a portion of the shareholders in the separate interest. If the petitioners are shareholders in the Portishead pier and railway then they are covered by the petition of the Portishead pier and railway company, whose *locus standi* is conceded; if they are not shareholders in the general undertaking, but only in the separate undertaking, then the petition is a petition of individual shareholders of the separate undertaking.

Bidder: Although we are shareholders in the company generally, yet there is that in our position which makes our interests distinct from the general interests of the company.

Mr. RICKARDS: There might even be a conflict of interests between the railway company and the dock undertaking?

Bidder: Yes. Suppose, for instance, that the Great Western company wished to divert the traffic another way, they might raise the tolls to such a height as would have that effect; but as long as they compensated the Portishead railway company by bonuses or similar means, the latter would be content, although the dock company would be deprived of all their profits. (The *Victoria Station* case, 1 Clifford & Stephens 169.) As regards the corporation, their power to purchase the dock gives them a special interest.

Pope: Admitting that the Portishead dock might be injured by the diversion of traffic which the amalgamation might render possible, the question would then turn on the form of the petition. It is not a petition professing to represent the dock interest, but only that of individual shareholders in that interest. Therefore, supposing the existence of a separate capital to

constitute a separate interest, that does not necessarily give these petitioners a *locus standi*, because it does not profess to be a representative petition of that interest, but only a petition of individual shareholders in the undertaking.

Mr. RICKARDS: An individual shareholder has a right to be heard if his interest is distinct from the general interest of the company.

Pope: Here there is no distinct interest *quâ* individual shareholders; there is only a distinct interest *quâ* dock interest. In *Baird's* petition (2 Clifford & Stephens 257), the Court allowed him a *locus standi*, but it was as a preference shareholder.

Mr. RICKARDS: Is not the principle the same?

Pope: I think not. That was the case of an individual whose status in the company would be altered by the proposed re-adjustment of capital. All the case decides is that the interest of a preference shareholder is so diverse from the general interests of the company of which he is a shareholder that he is not bound by their common seal; but the question here is whether an individual shareholder in a company which may be injured by the acts of another company (regarding the dock undertaking as a company) can be heard individually when his own company do not petition.

Mr. RICKARDS: Suppose a bill was promoted by the Portishead company, and was considered to be injurious to the separate dock undertaking in that company, would you say an individual shareholder in that separate undertaking might not petition, but that the whole class must combine?

Pope: No; but by Parliamentary practice, where a class interest can be represented by a class, individuals are swallowed up in the class.

Locus standi Allowed.

Agents for Bill, Dyson & Co.

Agents for Petitioners, Wyatt, Hoskins & Hooker.

HALIFAX WATER AND GAS EXTENSION BILL.

Petition of (1) WARLEY LOCAL BOARD.

1st May, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Waterworks—New Reservoirs and Works—Local Board within Existing Area of Water Supply—Streams, Interception of—Area of Water Supply, Extension of—Interference with Roads—Local Board Demanding Supply of Water in Bulk—Public Health Act, 1875.

This was a bill brought in by the corporation of Halifax, who had taken over the powers of the waterworks company, for the purpose of making a new reservoir and works, and

extending their area of supply. The local board of Warley, a district within the existing area of supply, was not constituted till some years after the corporation had obtained statutory powers to intercept certain streams within the Warley district, and impound those streams for the supply of Halifax. The local board now petitioned on the grounds that the proposed new reservoir was within the Warley district, and its construction would interfere with the roads under the petitioners' control, while, with an extended area of supply, the promoters must also take more water from Warley which was already much in want of it for sanitary purposes. The petitioners claimed to be heard more especially with a view to obtain under the bill a supply of water in bulk, as already furnished by the promoters in some of the neighbouring districts; and it was urged that as Warley water had been appropriated by the corporation of Halifax, the local board had an equitable claim to this supply in bulk in order that they might distribute it themselves. In reply the promoters pointed out that at present Warley was not supplied with water at all, that its inhabitants had never asked to be supplied by Halifax, and that before they had a right to supply themselves or dictate the terms of their supply, they must, under the regulations of the Public Health Act, 1875, show that they were in want of water, and that the existing water authority had refused, or were unable, to supply them:

Held, that the petitioners were only entitled to a *locus standi* against clause 16, which (in the deposited, though not in the amended bill) authorised the promoters to intercept additional surface water in the Warley district.

The *locus standi* of the petitioners was objected to, because (1) no lands, waters, or other property of theirs will be interfered with; (2) they have no right to object to interference with public roads and highways for the purpose of laying water-pipes across, or in such roads; (3 and 4) they have not and do not allege any such interest in the subject-matter of the bill as entitles them to a hearing according to practice.

Cripps, Q.C. (for petitioners): Warley is at the present time under a local board, but was not in that position when the Halifax waterworks company (now the corporation) in 1853 got their present powers to divert into their reservoirs certain streams which had their source

in and flowed through a part of the Warley district. Our district has greatly increased in population, but water which would fairly have been Warley water, and available for Warley purposes if no such Act had been passed, is diverted by the Halifax corporation, and goes to Halifax. We are greatly in want of water, and now can only get it from the Halifax corporation. They have power to supply in bulk certain districts, and they do supply in bulk on certain terms in and around Halifax. We desire to be supplied with water in the same way—that is to say, we desire to be wholesale customers, and distribute it ourselves in our own district. Though the promoters have the power to take our water at the present time, they are now asking to supply a new district. More of our water will therefore be taken, and under these circumstances we are entitled to be heard, in order to secure to ourselves a proper supply in bulk.

Littler, Q.C. (for promoters): The district of the petitioners is not supplied with water at all at present, and they have never asked us to supply them.

Cripps: At any rate we desire that the promoters should supply us in the future, and that the supply should be in bulk. They take water from our district, but they are not obliged to supply us with it until they have supplied Halifax; and they seek larger powers in this bill with respect to that water than they have hitherto possessed. By clause 16, they take power to intercept, collect, and impound in the reservoir, by the Act authorised, any streams, brooks, &c., intercepted by the reservoirs or works existing or authorised by the Act.

The CHAIRMAN: Have they power under the existing Act to intercept all the surface water in the Warley district?

Cripps: Only streams intercepted by their existing works, and they now seek similar powers over all surface water which may be intercepted by their new works.

The CHAIRMAN: Does the 16th clause give them further powers than the Act of 1853 did?

Cripps: Yes; they would have power under clause 16 to divert water which they have at present no power to take.

Littler: In the amended bill our proposal is clear. It is simply to take water out of the existing reservoir and put it into a new one. We shall not take a pint more water from the Warley district. The pipe must be a close one, because it is for the purpose of conveying water down a hill, and up another. We have altered the clause to make it more distinct.

Mr. Paskin (engineer to the promoters): The pipe cannot possibly intercept any water.

Cripps: The power undoubtedly stands in the original bill as deposited, by which the promoters are bound, that if the new works pass any streams, these may be intercepted.

Mr. Baistow: You are proposing to take power to construct a new reservoir in the Warley district?

Littler: Yes; but that is only to give us a higher pressure. If we want a higher pressure we must have closed pipes.

Cripps: We allege in the clearest way that

they will take the water, as well as interfere with our roads and property by new lines of main pipes, and that does not seem to be traversed by the objections. We say that "stringent provisions are necessary in the bill to ensure the proper protection" of the roads under our control.

The CHAIRMAN: You ask for a *locus standi* against clause 16 and any clauses which may authorise the construction of works in this particular district, including the construction of the reservoir?

Cripps: Yes.

Littler: Their petition really only touches the point of diversion of water. This reservoir clearly cannot be for that purpose. They do not say that they object to the making of the reservoir.

Cripps: We object to the reservoir so far as it is a mode of using fresh water.

Littler (in reply): The Warley local board are within our present limits of supply. Therefore, before they could themselves supply water, they would have to show that they came within the provisions of the Public Health Act of 1875. The only ground they have for a *locus standi* against clause 16 would be because they are an authority who may be able to supply water. They have no rights on the streams except as a sanitary authority who may procure a supply of their own; and before they can procure a supply of their own, being already within our limits, they must show that we are unable or unwilling to supply them. (*Public Health Act, 1875, ss. 51, 52.*) They do not allege that we cannot supply them, because we are ready and willing to do so. They do not allege that the streams, if they had them, could be used for their supply.

The CHAIRMAN: They need not allege it.

Littler: They would not be allowed to come to Parliament for a Provisional Order at all till they had shown that we had refused to supply them. If they could show that we were going to take water which they had a right to use for sanitary purposes, they would have a right to be heard, but they do not allege that, and it is not so.

Cripps: We say, "Your petitioners allege that the inhabitants of their districts would be injuriously affected thereby," that is to say, by taking, diverting or using waters within our district.

The CHAIRMAN: The *locus standi* of Petitioners is Allowed against clause 16.

Cripps: You do not allow us a *locus standi* as to the proposed extension of limits? Or with reference to the roads?

The CHAIRMAN: No. We Disallow the *locus standi* as to everything except clause 16.

Agents for Petitioners, Dyson & Co.

Petition of (2) OVENDEN LOCAL BOARD.

Waterworks—Municipal Corporation as Owners of—Limits of Supply—Interference with Roads

in Local Board District—Interception of Streams—Notice Served as to—Insufficient Allegations respecting—Cleansing of Stream Flowing through Local Board district—Assessment of Expenses on Riparian Owners, &c.—Representation of Owners, &c., by Local Board—S. O. 134—Practice—Omnibus Bills—Convenience of Counsel—More than One heard for Promoters—Upon Separate Petitions—Special Application to Court for Leave.

In the case of an omnibus bill against which there are several petitions, the Court have power, under the S. O., to hear more than one counsel for the promoters, and will consult the convenience of counsel accordingly; but not more than one can be heard upon the same petition, and a special application must be made to the Court on each occasion.

Against a bill promoted by a municipal corporation for making new waterworks, and extending their area of supply, the Ovenden local board (whose district was within the existing area of supply) petitioned on the ground of the further interception of streams within their district, their real object being to obtain an improvement of their present supply. It appeared, however, that no actual streams other than those which the promoters were already authorised to take could be pointed to by the petitioners; while as regarded the roads (the question of interference with which was raised *arguendo*), although the petitioners had been served, as owners, with notice of the works which were intended, they raised no specific objections to such interference:

Held, accordingly, that their *locus standi* on these grounds must be disallowed, but that under S. O. 134, the petitioners were entitled to appear against clause 23 of the bill, which empowered the promoters to cleanse a brook flowing from the petitioners' district into their own, the expense of such cleansing being assessed by the bill upon owners, lessees, and occupiers, living upon the banks of the stream in the Ovenden as well as the Halifax district.

The *locus standi* of the petitioners was objected to, because (1) no lands, waters, or property of theirs will be interfered with, and no such allegation is made; (2) they have no right to object to the improvement of the Ovenden brook within the boundary of the borough of Halifax and not within their own jurisdiction; (3 and 4) they have not, and their petition does

not disclose, any such interest in the subject matter of the bill as entitles them to be heard according to practice.

Granville Somerset, Q.C. (counsel for the bill, with *Little, Q.C.*) asked to be heard in the place of Mr. Little on this and the following petition, pointing out that in cases of omnibus bills, which were really eight or ten bills put together, it would be convenient if more than one counsel were allowed to appear for the promoters, each dealing with that particular portion of the scheme to which he had more specially given attention.

The CHAIRMAN: It appears to us that under the S. O. it is competent for us to hear more than one counsel for the bill; but we think that only one counsel for the promoters should be heard upon one petition. Notwithstanding that half-a-dozen points may be raised on one petition, we must only allow one counsel to appear against that petition. We ought to have a special application made on each occasion. On this occasion, the application having been made, we accede to it.

Penbrooke Stephens (for petitioners): The only connection Halifax has with us is that of a water company, not of a corporation; and according to practice a water or gas company coming to Parliament to increase its capital, gives an opening to the local authority even to the extent of raising the question of purchase if so disposed. It is erroneous to say that no water, lands, or property of ours will be taken or interfered with; we have received, for instance, notice as owners of the highway traversed by the pipes of the promoters. They take power also to cleanse and scour the Ovenden brook within our parish as well as in Halifax, and to charge the expenses of so doing in whole or in part on the owners or occupiers of land and buildings fronting or abutting on the brook. As to the question of water supply, we have been 23 years within the limits of the Halifax corporation, but only a portion of our district has been supplied with water. Now that they propose to extend their limits, without giving us a drop more water, surely we have a right to be heard? Unless we obtain protection now, we are powerless, for we have applied over and over again to the Halifax corporation for water, but we have never got it.

Somerset (for promoters): I am told that they have never applied.

Stephens: That information, I assure my friend, is not well founded.

MR. RICKARDS: The petition alleges that the higher parts of your district, "which the corporation are unable to supply," are in great want of water. May not the new reservoir amend that state of things?

Stephens: It may, no doubt. But, on the other hand, none of the water may find its way to Ovenden unless we are heard. The proposed abstraction from one district of water naturally belonging to it for the supply of a foreign district was the point so hotly contested in the *Wakefield* case. (*Wakefield Water Bill*, 1 Clifford & Rickards 122.)

The CHAIRMAN: But there the promoters had not been authorised by a previous Act to take the water from that very district. Having

already that power, the mere fact of the Halifax corporation extending their district and supplying other people is not sufficient to give you a *locus standi*.

Stephens: At any rate, they are seeking to increase their powers, and we may be prejudiced. As to roads, we have had notice.

The CHAIRMAN: The question of the roads does not, we think, properly arise on the petition. The promoters gave you notice that they intended to interfere with your roads, but, though your attention was called to it, you have not objected.

Somerset: We can call evidence to show that we do not take under the bill a drop of water that we have not power to take now.

The CHAIRMAN: Are any waters in the township of Ovenden intercepted or interfered with by the reservoir and works contemplated by this bill?

Mr. Paskin (resident engineer to the Halifax waterworks, called and examined): No further works for taking water under this bill are contemplated. It is not possible by the proposed line of pipes to take any water in the Ovenden district; we merely obtain a higher level.

(Cross-examined): An underground stream is crossed by our pipe, but we interfere with it under former Acts. The whole of it goes into our reservoir at the present time, and has done so for 20 years.

Stephens: I can prove by witnesses that under the general powers of clause 16, and by means of the existing works, there are waters in Ovenden which the promoters could take and appropriate under the powers conferred by this bill; though they might be the same waters they would be taken in a different way. Under their former Acts, of which there is a long series, they obtained powers, guarded by stringent clauses for the millowners, &c., but now by a general clause, they seek to obtain unrestricted powers over these very streams.

Somerset (in reply): The petitioners have no public or private rights in these streams; on the contrary, we have Parliamentary powers to take them subject to the rights of the millowners and riparian owners. Mr. Paskin's evidence shows that the petitioners have no *locus standi* upon clause 16.

The CHAIRMAN: Clause 23 is the only one upon which we need trouble you.

Somerset: That clause gives us power to improve the Hibble and Ovenden brooks. Ovenden brook is partly within our boundary, up to which point we are the sanitary authority, and partly without. Assuming that the petitioners are the sanitary authority with regard to the part outside our district, they still have no private rights over the brook. We propose to do certain things for sanitary purposes to the Ovenden brook, and we take power to assess the whole or part of the cost, as we think fit, on the owners, lessees, and occupiers of lands and buildings fronting the brook, that is to say, not the local board.

Stephens: We represent those owners, lessees, and occupiers, and are entitled to be heard under S. O. 134.

Somerset: You only represent them for certain

purposes. The owners, lessees, and occupiers on the banks are in favour of this bill, and do not appear.

Stephens: The same authority for sanitary purposes that Halifax has over the lower part of the brook we have over the upper, and if we did not do our duty by this stream, the owners, &c., would have a remedy against us.

Somerset: What is the good of our cleansing the lower part if the upper part in Ovenden is not similarly dealt with? The petitioners have no power whatever to do what we propose in clause 23.

The CHAIRMAN: You do not use it for water now?

Somerset: No, we cannot do so; it is a filthy sewer.

Stephens: And, therefore, these are new powers, for which the promoters are coming into our district. In fact, the objections admit our *locus*, for they say that we have no right to object to their interference with the Ovenden brook outside our district, thereby showing that we have a right to object to interference within our district.

Somerset: At the utmost it is a sanitary work, and not any disturbance of the rights of property.

The CHAIRMAN: In this case the Court *Allow* the *locus standi* of the Ovenden Local Board against so much of Clause 23 as relates to parts of the Hebble and Ovenden brooks within the township of Ovenden and beyond the boundaries of the borough of Halifax.

Agent for Petitioners, *Lewin*.

Agents for Bill, *Durnford & Co.*

HUDDERSFIELD WATER AND IMPROVEMENT BILL.

Petition of (1) OWNERS of HOUSES, &c., in HUDDERSFIELD.

23rd March, 1876.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Improvement Bill—Fire Brigade, Maintained by Municipal Corporation—Expenses of Extinguishing Fires—Transfer of Charge from Ratepayers to Owners of Property—New Liability imposed on Owners—Representation of Owners by Corporation—Owners need not Petition as Class.

This was a bill promoted by the corporation of Huddersfield, who took power under clause 103 to repeal a section of an Improvement Act of 1871, whereby they were authorised to charge upon the rates the expenses of extinguishing fires within the borough, and now proposed to transfer those expenses

to owners, both within and without the borough, upon whose properties the fire took place. The petitioners, who were owners of property within the borough, objected that clause 103 would impose upon them a new liability, hitherto defrayed by the ratepayers at large, and that they were entitled to be heard against this provision. The promoters objected that the petitioners were ratepayers as well as owners, and could not, therefore, be heard against a bill promoted by their own corporation:

Held, however, that they were entitled to a *locus standi* against clause 103 of the bill.

(*Per Cur.*) In cases where a new liability is imposed on them, owners within municipal limits are not represented by the corporation, nor need they petition as a class. Each owner has a grievance when a new burden will affect his individual property, and has a right to be heard in respect of this grievance. In such cases individual owners may have a *locus standi*, and the doctrine of representation applies only to ratepayers.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be taken, nor do they allege in their petition that they will be injuriously affected by the bill; (2) the provision in the bill to which they object, if it affects them at all, only affects them as inhabitants and ratepayers of the borough of Huddersfield, and they cannot be heard in either capacity against a bill promoted by the corporation of that borough; (3) their petition was never agreed to in, nor is it presented in pursuance of, a public meeting of owners of property in the borough; (4) they do not so represent owners of property in the borough, nor do they allege any such ground of objection in their petition, as to entitle them to be heard according to practice.

Pope, Q.C. (for petitioners): We claim to be heard on the ground that, under the bill, a new liability will be imposed upon owners of property. We especially object to clause 103 of the bill, which repeals s. 257 of the Improvement Act of 1871. Under that section the corporation are empowered to send fire-engines beyond the limits of the borough, and to recover the expenses of sending them beyond the limits of the borough from any person upon whose property the fire-engines may be employed. Clause 103 will repeal this section, and provide that in all cases where the fire-engines are employed, within as well as beyond the limits of the borough, the expenses shall be borne by the owners of the property where the fire occurred, and shall be determined by an appeal to a justice, whose decision shall be final. The expenses of extinguishing fires within the

borough are at present charged upon the rates, whereas the promoters now propose to take this liability from the ratepayers generally and fix it exclusively upon owners of property. Owners may not be residents in the borough, but are now for the first time made liable for this charge. (*St. Helen's Improvement Bill*, 1 Clifford & Stephens 52; *Cardiff Improvement Bill*, 2 Clifford & Stephens 154; *Hove Improvement Bill*, 1 Clifford & Rickards 80; *Pontefract Borough Extension Bill*, *ib.* 183.)

J. Coates, (Parliamentary Agent, for bill): There is no burden upon the municipality at all to extinguish fires. The power given in s. 257 of our Improvement Act, 1871, is only a permissive power.

Pope: The courts of law have decided that if a corporation in the exercise of its power maintains a fire brigade, the cost of maintaining it is a charge on the general rates.

Coates: The question is whether we impose any new charge upon owners. We seek now not to throw the cost of maintaining a fire brigade or a proportion of it upon owners generally, but simply to provide that the cost of the attendance of a fire-engine shall be paid by the owner of the property where the fire takes place, whether within or without the borough. The petition is only signed by 80 owners.

Mr. Rickards: Owners need not petition as a class. Each owner has a grievance in respect of a new burden affecting his individual property. In such cases we have allowed a *locus standi* to individual owners. Representation does not apply to an owner, but to a ratepayer; and that is why ratepayers are held to be concluded by the act of the corporation. The owners point out that by this bill they would be subject to a charge which, by the general law of the country, they would not be subject to.

Coates: The petitioners here are ratepayers as well as owners. (*Kingstown Township Bill*, 1 Clifford and Rickards 39.)

CHAIRMAN: The *locus standi* of Owners of houses, warehouses, shops, buildings, and other property in Huddersfield is allowed against clause 103.

Agents for Petitioners, *Grahames & Wardlaw*.

Petition of (2) the TRUSTEES of the CHARITY ESTATES of the late JOHN ARMITAGE.

Hospital for Infectious and Contagious Diseases—Adjoining Landowner Injuriouly Affected—Charity Trustees—Building Land—Income of Charity, Alleged Depreciation of—"The Gunpowder Case"—Existing Fever Hospital—Cemetery—Compensation—Remedy under Lands' Clauses Act, 1845, Sec. 68.

The trustees of a charity petitioned against clauses of a bill enabling a corporation to acquire and use, for the purposes of a hospital for contagious and infectious diseases,

an old workhouse and other buildings upon a site immediately adjoining the land of the charity, which the petitioners, under the authority of the Court of Chancery, had laid out for building purposes. The trustees contended that the establishment of a hospital of this character in close proximity to their lands would materially lessen the value of their property, and render building operations hopeless, thereby depriving the charity of the revenue on which their scheme depended. On behalf of the promoters it was urged, on the other hand, that for many years the workhouse and buildings in question had been utilised as a fever hospital, formerly by the workhouse authorities, and of late by the corporation themselves; that the object of the bill was mainly to give a good title to the premises; that the lands of the petitioners being close to an existing cemetery were unsuitable for building; and finally that the bill did not deprive the petitioners of any compensation to which they, under the Lands' Clauses Act, might be entitled:

Held, that they were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the erection of such a hospital as is objected to near their land does not injuriously affect them, so as to entitle them to a hearing; (2) such a hospital already exists on the same site, and has been occupied and used by the corporation for three years past for the purposes objected to; (3) no such alteration of circumstances will result from the passing of this bill as to entitle them to be heard; (4) they cannot be heard on the ground that the site is unsuitable for a hospital; (5) they allege no grounds for a hearing according to practice.

Pembroke Stephens (for petitioners): The promoters propose to take a plot of ground known as the old workhouse, and adapt the buildings thereon to the purpose of hospitals or wards for the reception and treatment of persons suffering from any contagious or infectious disease, and clause 61 provides for the removal to this hospital of persons suffering from small-pox, cholera, or fever. We, as trustees of the charity of the late John Armytage, are owners in fee of land which adjoins the workhouse site, and we are empowered by the Court of Chancery to let the charity property at the best annual rent that can reasonably be obtained, and also to devote a portion to building purposes, the rents and any increase in the value of the property itself being devoted to the purposes of industrial schools in Huddersfield. The land adjoining the workhouse has been surveyed and laid out, but building operations have been delayed by an exchange of part of the land which has now been com-

pleted. The trustees are advised that the powers of this bill will materially depreciate their property, as it will be impossible to get satisfactory tenants in close proximity to a hospital of this character. We do not want to prohibit hospitals altogether, but there are other and better sites which might be obtained.

Mr. PEMBERTON: Is the workhouse used as a fever hospital now?

J. Coates (Parliamentary Agent, for promoters): Yes; and for the last twenty years.

Stephens: An application on the subject is before the Local Government Board at present, which will be virtually defeated if this bill passes, legalising the proposed use of these buildings.

Mr. RICKARDS: Do you contend for the trustees that you could not be compensated under sec. 68 of the Lands' Clauses Act?

Stephens: I doubt whether we could. Whatever the compensation was, it would not be such as to enable the objects of the charity trustees to be carried out. This case and the proposed injury are unique. The only resemblance to it in the books is probably in the *Gunpowder* case, where, on account of the widespread mischief which might be occasioned by the works authorised by the bill, the proprietors of powder-mills were allowed a hearing, though the mills themselves were not to be removed. (*Caledonian Railway, Balerno and Pennyquick Branches*, 1865, 1 Clifford & Stephens, text 40.) Very recently, in the *South Eastern* case (*post*, 258), petitioning glass manufacturers were heard on the ground that their light and air would be interfered with. These decisions show that the Court, apart from actual taking of lands, will not shut its eyes to the surrounding circumstances when they are of an aggravated character. There is a roadway abutting on our property, near which, in the ordinary course, houses would be erected, but along this road fever patients will now be carried.

Coates (in reply): Ever since 1847, there has been a building on the site in question, which has been used as a fever hospital by the workhouse authorities, and for three years past it has been used by the corporation for like purposes. The overseers of the poor have no intention of disturbing us in our use of it as a fever hospital, and they are willing that we should either go on as their tenants, or buy the workhouse and grounds from them. There being some doubt about the title to the land, we have come to Parliament to get a good title under the Lands' Clauses Act, so that in improving the hospital we may be secure. Under the general law, supposing this to be building land, the petitioners will get compensation, but except for the purposes of the present discussion it can hardly be regarded as building land at all.

The CHAIRMAN: It is a case of danger to the future tenants of houses not yet built, is it not?

Stephens: The income of the charity is directly involved nevertheless, the land having been laid out for building.

Coates: The locality can hardly ever be considered attractive, for on one side the land is bounded by a cemetery already existing. The application to the Local Government Board

does not really touch the powers we are now seeking. "*The Gunpowder case*" was in the early days of the Court sitting as an engineering tribunal, and some lands of the petitioners were taken there. As to the *South Eastern* case, the petitioners here are not glass manufacturers.

Locus standi Disallowed.

Agent for Petitioners, Cripps.

Petition of (3) the RAVENSTHORPE LOCAL BOARD.

Water Bill—Former Acts—Acts to be Read as one—Corporation—Adjoining Local Board—Water Limits—Extension of—Former Act passed by Surprise—Double Supply—Past Legislation—Whether Curable.

Against that portion of an improvement bill conferring larger water powers upon the Huddersfield corporation, the Ravensthorpe local board sought a hearing, upon the ground that, by clause 3, the bill was to be read together with the previous water Acts of the corporation, under one of which the district of Ravensthorpe had been brought within the water limits of the corporation, as the petitioners alleged, by surprise, and, notwithstanding the fact that they had themselves incurred expense in supplying their district with water, by arrangement with their more immediate neighbour, the borough of Dewsbury:

Held, that as the bill made no mention of Ravensthorpe, and the injury complained of must accordingly be traced back to the Act of 1871, the petitioners were really complaining of former legislation, and their proper remedy, therefore, was to bring in a bill constituting Ravensthorpe a separate district.

The *locus standi* of the petitioners was objected to, because no lands, &c., of theirs were taken, or injuriously affected; the bill conferred no powers on the corporation of Huddersfield to supply water to Ravensthorpe; the powers complained of had been granted to the promoters by the Huddersfield Water Act, 1871, and were not varied by the bill, and the allegations of the petition all had reference to the former Act. No existing rights of the petitioners were varied, and no grounds for a hearing were shown, according to practice.

Fembroke Stephens (for petitioners): The water

powers of the Huddersfield corporation were first obtained in 1869, and extended in 1871; and the bill (clause 3) proposes that these Acts and this Act "shall be construed and have effect together as one Act." Our district has no natural connection with Huddersfield, and it is some six miles distant from it; moreover, we have recently been included within the Parliamentary limits of the borough of Dewsbury, which we immediately adjoin, and of which we form a manufacturing suburb. In 1864, the Local Government Act, 1858, was adopted by the district of Ravensthorpe, which was then carved out of the agricultural township of Mirfield, of which it had previously formed part; but it was not until nine or ten years later that the residue of the township was formed into a separate district, known as "the Mirfield local board district," the interests and population of which are altogether distinct from those of Ravensthorpe. In 1866 we laid down mains and pipes at a cost of £2,400, and obtained a water supply from Dewsbury, which since 1867 has been distributed under our own control. The Huddersfield corporation in their Act of 1871 made no direct mention either of the district of Mirfield or of the district of Ravensthorpe, but under the old description of the "township of Mirfield" brought both these districts, as we have since ascertained, within their water limits. Nothing however was done under the powers of that Act until quite recently, when doubtless in connection with their present application to Parliament they commenced to lay down mains in our streets. We contend that it could never have been the intention of Parliament thus arbitrarily to disturb existing arrangements, and introduce strangers into the district against the will and without the knowledge of the transferred area. Much indignation has been excited locally, and resolutions have been passed authorizing us to apply the rates in opposing this bill. The only connection Huddersfield can have with our district is the desire to make money out of it, for Ravensthorpe has already a water supply of its own; and the only answer attempted to us is that we are complaining of past legislation.

The CHAIRMAN: Can you refer us to any clause of the bill which in terms takes in your district now?

Stephens: We contend that the effect of clause 3 is to do so.

Mr. RICKARDS: I suppose there can be no doubt of the legal effect of the Act of 1871—that is to say, that it took in the whole of the township of Mirfield?

Stephens: The parish of Mirfield is undoubtedly mentioned in the Act of 1871, and accordingly is, by reference, mentioned in the present bill.

J. Coates (Parliamentary Agent, for promoters): There is no provision in the bill that affects the Act of 1871.

Stephens: Although a person is not heard ordinarily to complain of past legislation, where injury has been done *per incuriam*, or where there has been legal fraud, or anything of that sort, the propriety of revising past legislation may surely be considered. Had this bill contained no reference whatever to the legislation

of 1871, the Court might have felt itself embarrassed in entertaining an application; but that difficulty is removed, as the promoters have made the bill one with the Act of 1871. In the *Widnes* case (1 Clifford & Stephens 116), the Court thought there was such an interference with the existing status of Mr. Melling that they granted him a *locus*, although he had no statutory powers of supply. We, on the contrary, represent the ratepayers.

Mr. RICKARDS: The only way in which you could get the relief you seek would be in effect by repealing so much of the Act of 1871 as included the township of Mirfield. You are, in fact, complaining of something in the former Act, not in this bill?

Stephens: Both Acts are to be read together. In the Act of 1871 they never mentioned the district of Ravensthorpe.

Mr. RICKARDS: Nor was it necessary, if they used the larger description—"township of Mirfield."

Stephens: The original township of Mirfield had been split up at that time. No doubt we ought to have been more vigilant. Had we been, it can hardly be supposed that Parliament would have granted these powers, seeing that we were actually supplying the district with water when the promoters' bill was introduced. In the interval they have done nothing for Ravensthorpe. Why should we not go before the Committee and ask for a repeal of the powers so obtained behind our backs?

Coates: We have expended £500,000 upon our works.

Stephens: Very possibly; but not in Ravensthorpe. If we are shut out it will never be open to petitioners to seek redress of an injury inflicted upon them unwittingly by Parliament.

Mr. RICKARDS: You might bring in a bill to constitute Ravensthorpe a separate district?

Stephens: But the contest would be a very unequal one between Ravensthorpe and Huddersfield.

[The Town Clerk of Huddersfield stated, in reply to the Court, that there had been some local opposition to the Act of 1871, but not to the extended limits of water supply from any of the outside districts; that the notices had been duly published in the *Gazette*, and also in the local newspapers; and that the requirements of the S. O., as to notices, plans, &c., had been complied with.]

Stephens: No notice or application reached us.

Mr. RICKARDS: "*Vigilantibus non dormientibus, leges subveniunt.*"

Locus standi Disallowed.

Agent for Petitioners, C. Walker.

Agents for Bill, Dyson & Co.

KILDWICK PARISH GAS BILL.

Petition of (1) SAMUEL WATSON.

23rd March, 1876.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company for Supply of Parish—Competition with Private Manufacturer already Supplying part of Parish—Statutory right to break up Roads, absence of—Gas Supplied for Private Purposes.

This was a bill for incorporating a new company called the Kildwick parish gas company, and authorising them to supply gas to the parish of Kildwick, which consists of nine townships. The petitioner was a mill-owner and trader in Kildwick, who supplied his own premises with gas, and also supplied through his own mains, but not under statute, the parish church and school, and dwelling-houses within two of the townships of the parish; and he claimed to be heard against the bill on the ground of competition. The promoters objected that he was not by trade a gas manufacturer, but merely a private trader who accommodated his neighbours by supplying them with his surplus gas:

Held, however, that he was entitled to a *locus standi*, limited to so much of the bill as referred to the two townships supplied by him.

The *locus standi* of the petitioner was objected to, because (1) he does not allege that he has, nor has he, any statutory or other power to supply gas within any parts of the limits of the bill, but he is merely a private owner supplying gas to his own mill and works; (2) as such private owner he has no right to be heard against a bill for supplying the whole of Kildwick with gas, as Kildwick contains nine townships, and he only supplies portions of two townships with gas; (3) he cannot lawfully break up or open any public streets or roads for laying down his pipes, and the bill will not interfere with his supplying gas privately; (4) he cannot be heard on the ground of competition; (5) or according to practice.

J. Coates (Parliamentary Agent, for petitioner): The petitioner is a manufacturer at Kildwick, where he has gasworks of his own, by means of which he has supplied the townships of Farnhill and Kildwick, and he seeks to be heard against the bill on the ground of competition. At the request of the inhabitants he has laid down pipes, and thereby supplied gas to the parish church and schools, and other public places, besides several mills, and numerous dwelling-houses and

places of business, with the approval of the consumers in respect of quality, quantity, and price. Our works and mains have been extended from time to time as necessity required, and now traverse the townships of Farnhill and Kildwick, in the parish of Kildwick. Within the last three years we have laid down new works on ground purchased by us for supplying consumers in those townships, and we say that those works are sufficient for the supply demanded, so that there is no necessity for the formation of a new gas company. If our works are insufficient, we can and will extend them.

Richards, Q.C. (for promoters): The petitioner does not supply, as in some cases, any public lamps. He first began by supplying his own works, and then obliged some of his neighbours by letting them take his gas. He stands in the same position as the owner of a well who let his neighbours draw water from it, and then sought a *locus standi* against a water company proposing to supply the district. The petitioner is not a gas manufacturer by trade, but merely for his own convenience in the first instance. At all events, his *locus standi* must be limited to his actual area of supply.

The CHAIRMAN: The *locus standi* of the Petitioner is *Allowed*, so far as regards the townships of Farnhill and Kildwick.

Agents for Petitioner, *Dyson & Co.*

Petition of (2) SILSDEN LOCAL BOARD.

Gas Company—S. O. 134—Local Board within Proposed Limits of Supply—Competition—Gas and Water Facilities Act, 1870—Public Health Act, 1875—Provisional Order, Effect of Application for—Lands, Interference with, by Gas Company.

A bill was promoted constituting a gas company to supply the parish of Kildwick, which included within its area several townships. The local board of Silsden, one of the townships in question, claimed to be heard against the bill on the ground of interference with the roads under their control, and also because, having applied to the local government board for a Provisional Order under the Gas Works and Facilities Act, 1870, and the Public Health Act, 1875, with a view to supply the whole of their own district, they were virtually competitors with the promoters. It was argued, in reply, that the mere application for a Provisional Order could not give the petitioners a *locus standi*, as their application might not be granted, and if granted might not be confirmed by Parliament:

Held, that they were entitled to be heard under S. O. 134, as the local authority for Silsden, so far as the bill affected their own township.

The *locus standi* of the petitioners was objected to, because (1) they have no statutory or other authority to supply gas within any part of the limits of the bill, and the fact that they have applied to the local government board for a Provisional Order under the Gas and Waterworks Facilities Act, 1870, and the Public Health Act, 1875, is not sufficient to give them a *locus standi*; (2) no property or rights of theirs will be interfered with; (3) they have no right to be heard on the ground of competition; (4) they are only entitled to be heard (if at all) so far as relates to interference with roads or streets under their control; (5) they are not entitled to be heard according to practice.

Hooker, (Parliamentary Agent, for petitioners): Our district is included in the parish of Kildwick, and is within the limits of the bill: we are the only sanitary authority in the Silsden district, and we allege that we shall be injuriously affected by the bill. We are moreover virtually promoting a competing bill, as we have applied for a Provisional Order from the local government board. But S. O. 134 in any case would admit us. The Public Health Act, 1875 (ss. 161 and 162), gives us express powers to light our district, and 1 Clifford and Stephens 92 (*text*), is in our favour. The Normanby local board were admitted in a similar case this session (*post*, 260), though no question of competition arose there. (*Staffordshire Potteries Water Bill*, 1 Clifford & Stephens 152.)

Richards, Q.C. (for promoters): The petitioners make no suggestion that there is now any supply of gas in Silsden, but they claim to be heard as the local or municipal authority under S. O. 134, although their town could not, as is there required, be injuriously affected. They also say that they have applied for a Provisional Order, but that order may never be granted, and if granted, may not be confirmed, so that their position is wholly inchoate. They may never have a bill in Parliament, and cannot be heard on the score of competition. If their contention were to prevail, the instant that a company proposed a bill for the supply of any district, a local board in any part of the district might immediately ask the local government board for similar powers, and so get a *locus standi*. (*London and South Western Railway (new lines in Surrey)* Smeth. 92.)

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed* so far as relates to the township of Silsden.

Agents for Petitioners, *Wyatt, Hoskins & Hooker.*

Petition of (3) KEIGHLEY LOCAL BOARD.

Gas Company—Competition with Local Board—Supply of Gas by, by agreement, within Limits

of Bill—Application for Provisional Order treated as Competing Bill—Unsuitable Site—Insufficient Capital.

A bill incorporating a company to supply with gas certain townships was opposed by the local board of Keighley, who already supplied their own township, and, like the petitioners in the case last reported, had also applied to the Local Government Board for a Provisional Order with a view to the supply of two other townships, included in the bill, and already supplied in part by the petitioners by agreement. Besides complaining of competition, the petitioners alleged that the site of the proposed works was unsuitable, and the capital insufficient :

Held, that they were entitled to be heard on the ground of competition, their *locus standi* being limited, however, to so much of the bill as related to the townships already supplied by them.

The *locus standi* of the petitioners was objected to, because (1) they have no statutory powers to supply gas within any portion of the limits of the bill; (2) the fact that they have applied to the Local Government Board to extend the petitioners' district, so as to include therein portions of two of the townships within the limits of the bill, gives them no right to be heard; the Local Government Board have no power to extend their local acts for the supply of gas to the whole of the townships of Steeton, with Silsden and Eastburn; and even if the Local Government Board have such power, the fact that such application had been made would not entitle the petitioners to a *locus* on the ground of competition or otherwise; (3) the petitioners are not the proper parties to defend the rights and interests of other local authorities; (4) the bill would not enable the promoters to supply gas within the existing gas limits of the petitioners so as to create competition; (5) they cannot be heard with reference to the suitability of the lands proposed to be taken by the promoters for gas purposes, or the insufficiency of the capital to be raised; (6) they have not, nor do they allege that they have, any grounds for a hearing according to practice.

Clerk, Q.C. (for petitioners): We are the district local board, and by virtue of our several local Acts we supply gas in Keighley and the adjoining parish of Bingley. We also supply by agreement parts of the parish of Kildwick, namely, the township of Steeton, with Eastburn and Silsden. We are now seeking powers from the Local Government Board to supply those townships, and the fact of our being before the Local Government Board is no ground for our being excluded from coming before a committee in the ordinary way. On the con-

trary, the parties here must be treated as promoters of competing bills, one being before the Local Government Board, who are for certain purposes in the room of Parliament, and the other before Parliament itself. (*Glasgow Corporation (Municipal Extensions) Bill*, 2 Clifford & Stephens, 221.) It is the principle of modern legislation carried out and extended by the Public Health Act, 1875, that the gas and water supply of each district should be in the hands of the local and sanitary authority.

Mr. RICKARDS: Supposing two bodies applied to take powers over the same district, one by a private bill and the other by a Provisional Order, and supposing both passed?

Clerk: Both would be competing, and both would have equal authority for breaking up the streets, and so on.

Richards, Q.C. (for promoters): We do not propose to enter the petitioners' township at all. They have only applied to the Local Government Board to enlarge their boundaries. As to the case of the Glasgow Municipal Extension, it was only an application to a sheriff, which is on an entirely different footing. A sheriff's order in Scotland is equivalent to an Act of Parliament. It is not an inchoate proceeding like a Provisional Order, which is nothing until it is confirmed by Parliament. To put themselves on an equal footing with us, the petitioners ought to come here with a Provisional Order already obtained from the Local Government Board.

Mr. RICKARDS: The petitioners say that they supply, and are authorised to supply, not only the inhabitants and manufacturing and other trade premises in the district of Keighley, but also other large portions of the parish of Keighley, and parts of the adjoining parish of Bingley, with gas upon reasonable terms, and that they also supply by agreement gas to certain portions of the parish of Kildwick. What portions of that parish are there referred to?

Clerk: Steeton and Silsden.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed* so far as relates to the townships of Steeton with Eastburn and Silsden.

Agents for Petitioners, *Sharpe & Co.*

Agents for Bill, *Toogood & Ball.*

LANCASHIRE AND YORKSHIRE RAILWAY BILL.

Petition of THOMAS BROCKLEBANK and FREDERICK DRESSER.

29th March, 1876. — (Before Mr. PEMBERTON, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; and Mr. RICKARDS.)

Railway—Enlargement of Station—Stopping up Adjacent Thoroughfares—Arch under Railway—Rice Mill—Business Premises—Traders—Owners and Occupiers—Injurious Affected—Access impeded—Route lengthened—Levels of Streets—Wagons—Loading and turning—

Deterioration in value—Injury to Trade—Corporation—Street Authority—Representation—Public and Private Interests in Streets—Allegations of, in Petition—Sufficiency of.

The bill proposed, *inter alia*, to widen and otherwise improve the station of the company at Liverpool, and for that purpose to take portions of certain streets and stop up others, vesting the soil in the company, and particularly to close up a tunnel or archway, by means of which a thoroughfare was carried under the station, as at present existing. Substituted and wider streets were agreed to be constructed for public use at one side of the railway; but the petitioners, who were respectively the owner and tenant of a rice mill and extensive premises lying at the opposite side of the station and close to the mouth of the archway, complained that they would be deprived by the bill of their best and only practicable access, having regard to the width and levels of the streets upon the side of the line to which, for the future, they would be restricted, and also urged the serious difficulties which would be entailed upon them in the conduct of their business, and the consequent deterioration in the trade value of their premises. The promoters relied in their objections upon the supposed representation of the petitioners' interests by the corporation as the street authority; but this ground failing, contended that the petition did not put forward any sufficient ground of injury:

Hell, however, that both the petitioners were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition is founded upon the powers sought to close Edmund Street and Plumbe Street, along which the carts of the petitioner, Frederick Dreser, pass, he being tenant of a rice mill in Edmund Street, of which Thomas Brocklebank is the owner, and on the inconvenience which will be thereby caused; (2) the dealing with those streets, as proposed by the bill, is opposed by the corporation of Liverpool, who are the street authority, and the petitioners have consequently no right to be heard, being represented by the authority constituted by them to protect the streets and highways within their district; (3) the petition contains no other ground on which a right to be heard can be claimed.

Pembroke Stephens (for petitioners): The petitioners are respectively owner and tenant

of a rice mill in Edmund Street, one of the streets proposed to be stopp'd up. The width of Edmund Street at the lower end is only 17 feet, and at the upper end, near the rice mill, only 19 feet. At this latter point, when the archway is stopped, there will be a dead end, in place of the present continuous thoroughfare. The drays which come to our mill are 17 feet in length, consequently they cannot be turned round in front of our premises without danger of serious injury to the horse. The side streets are even narrower.

Sir H. D. Wolff: Will there be room for two drays to pass each other in Edmund Street?

Stephens: Hardly. But the grievance is that in future the carts, when loaded, under all these difficulties, must be taken up hill instead of down. A very large business is done at these mills; frequently as much as 400 tons per day of produce is carted to them. The effect of stopping up Plumbe Street and Edmund Street will be to compel us to take our wagons, in every case, round by a route 130 yards longer than the one we now use, and much more severe, requiring, moreover, the carts to be turned at this dead end and sent back, instead of moving continuously in a chain. This extra distance and loss of time will involve a loss to the petitioner, Frederick Dreser, of £300 to £400 a-year as tenant of the rice mill, and a corresponding depreciation of the value of the mill for trade purposes to the owner Thomas Brocklebank, irrespective of the consequences from stopping up the street itself. The objection raised by the promoters, and the only one which they put forward, is that we are represented by the corporation, but this is a total error.

Pope, Q.C. (for promoters): The petitioners might have a right to be heard, if they had a grievance distinct in kind from that of the corporation; but their case hangs exclusively on interference with streets, and the corporation petition as the street authority.

Stephens: The street authority does not represent all the interests that may be affected by interference with roads. (*London Street Tramways Bill*, 1870, 2 Clifford & Stephens 85)

Mr. RICKARDS: The case of omnibus proprietors is very special. Their vehicles are licensed to traverse particular thoroughfares, which may be the very ones affected.

Stephens: Practically, our route is determined for us by the existing archway and the levels of the other approaches to our mill. We rely also on the decision in the *Lancashire and Yorkshire Railway (New Works) Bill*, 1871, *Petition of Messrs. Ellis* (2 Clifford & Stephens 173). This case seems very much on all-fours with the present.

Mr. RICKARDS: You put this as the case of a trader who is prevented from carrying on his trade, or at least, who is very much impeded in carrying on his business, and not as the case of an owner of property whose premises are injuriously affected?

Stephens: I complain in both capacities—of the injury to trade, and depreciation of property and loss of time as on a double petition: and the only answer is "representation." That being

so, we felt it right to forward to the corporation a copy of the notices of objection, and to ask them to protect our interests, as the promoters alleged that they were the proper people to do so. The reply of the corporation is to the effect that they will make the best arrangements for the public generally that the case admits of, and will protect particular thoroughfares named; but they add that as regards individual interests affected, they have no power to spend the public funds in fighting private battles, and accordingly, if any special interests of the petitioners are threatened, they must take the necessary steps to protect themselves. And we are here for that purpose and no other. What becomes, accordingly, of the theory of representation set up by the promoters? [*He was then stopped.*]

Pope, Q.C. (for promoters): My friend's closing observations are by way of supplement to the petition, which is very meagre in its allegations, and should not be suffered to upset well-established practice. The *Lancashire and Yorkshire* case, though, I admit, a strong one, is the only decision of the kind that has been given. According to all ordinary practice in this Court, the petitioners would be represented by the corporation as the street authority, unless on the face of the petition they disclosed such an injury as to constitute a special grievance irrespective of the grievance sustained by the community. In the *Lancashire and Yorkshire* case the petition was very explicit, and set forth the precise injury complained of. The petitioners here do not allege that they have to turn their carts in a portion of the space proposed to be absorbed in the station, or that the stopping up of the archway will make things worse than they are now. They say that they use the thoroughfares which are proposed to be stopped up, but they only use them in the same way as every other occupier in Edmund Street uses them. They do not allege any injury peculiar to their own mill.

Stephens: We allege "that a loss will be occasioned to your petitioners in case Edmund Street is no longer a thoroughfare, which would be highly damaging to the mill as business premises, and the value of the mill would be greatly affected thereby."

Pope: That is merely the general result, and might be said of the closing of any thoroughfare whatever.

The CHAIRMAN: The *locus standi* of both Petitioners is *Allowed*.

Agents for Bill, *Dyson & Co.*

Agent for Petitioner, *Lewin*.

LANCASTER WATER AND IMPROVEMENT BILL.

Petition of (1) LONDON AND NORTH WESTERN RAILWAY COMPANY; (2) MIDLAND RAILWAY COMPANY.

27th March, 1876.—(Before Sir JOHN ST. AUBYN, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Waterworks, Construction of—Railway Company as Owners and Ratepayers—Interference with Bridges, Railways, &c., by Water-pipes—Differential Rating—Commutation of Tolls, Permissive—Borough Fund, Increased Charges upon—Representation of Railway Company by Municipal Corporation.

The London and North Western railway company alleged that in constructing the waterworks proposed by the bill some of their bridges and other works might be interfered with, and on this ground their *locus standi* against certain clauses was conceded. The Midland company did not allege interference with their railway, but both petitioners desired to be heard against clauses empowering the corporation of Lancaster, who promoted this bill, to compound by consent for certain local customs now payable to them, the petitioners alleging that this commutation might prejudicially affect them as ratepayers, by throwing upon the borough fund increased charges, towards which they would have to contribute. As, however, the proposed commutation was only permissive, and as, in their character of individual ratepayers, the petitioners were represented by the corporation, the *locus standi* on this ground was disallowed. The petitioners also claimed a hearing in order to make out a case for differential rating upon their property, on the basis of the rates levied under the Public Health Act:

Held, that as the bill proposed no new rate or burden by which the petitioners could be injured, they had no *locus standi* on this ground.

The *locus standi* of (1) the London and North Western railway company was objected to, because (1 and 2) no lands, railways, works, property, privileges, or rights, of theirs would be interfered with; (3) the new powers of laying mains and pipes did not affect them; (4) the provisions relating to the commutation of the tolls, customs, and duties there referred to were only permissive; (5) this ground of complaint did not specially apply to the petitioners, who were single ratepayers, but was general, and clearly gave a right of hearing to representatives of ratepayers as a class; (6) the bill did not propose to alter or increase the rating power of any authority, and the grounds of complaint alleged in the petition, so far as they related to differential rating, were only applicable to past legislation; (7) the petitioners could not be heard according to practice.

The *locus standi* of (2) the Midland railway company was objected to on similar grounds.

Little, Q.C. (for London and North Western company): We claim to be heard on the ground, first, that the works proposed by the bill will interfere with our railway, bridges, or other property in Lancaster; and, secondly, that the bill will subject us to new and increased rates. In laying down new mains the promoters must alter their existing works, and they may and probably will bring some of their mains under our bridges and over our lines. (*Walsall* case [post, 273], and *Woolton Gas* case, 1 Clifford & Stephens 60.) The promoters incorporate the Waterworks' Clauses Act, 1863.

Mr. RICKARDS: You must show that the extended works will injure your property, and that you are not protected by general Acts.

Little: I am told that the new works probably will injure our property, and we allege injury in our petition. With regard to rates, the corporation have power under the bill to commute tolls now paid by other ratepayers, especially our competitors the Midland Railway, and they propose to extend their area of water supply. Apart, however, from that extension, if they are empowered to commute the tolls of some ratepayers, they must impose heavier rates upon others, ourselves amongst the rest. It is true this power is only permissive, but it is not provided that this commutation shall extend to all equally, and therefore the corporation might make a commutation with our rivals the Midland Railway, and thus throw a heavier burden upon us. In the *Birmingham* case last year (1 Clifford & Rickards, 144), there was only a transfer of an undertaking, and existing legislation was not affected. Under this bill a new and different application of the borough fund is authorised; therefore there is new taxation, and the corporation are imposing a new rate, to which as ratepayers we are entitled to object. They also propose to acquire the town moor, and make it a place of public recreation, which we shall have to pay for, but cannot use, and against this proposal we are entitled as large ratepayers to be heard. Following the principle adopted in the Public Health Act, we claim that we should be rated to the borough fund to the extent of only one-fourth. That exemption has been granted us in the *Liverpool* Act, the *St. Helen's* Act, the *Oldham Borough Improvement* Acts of 1865 and 1875, and the *Oldham Corporation Waterworks* Act, 1875.

Beale, Parliamentary Agent (for the Midland company), stated that their case would be governed by the decision of the Referees on the *London and North Western* case, the petition of the two railway companies being substantially the same, except that the Midland company did not raise the question of possible interference with railway works.

Wright (for promoters): As to apprehended injury to the works of the London and North Western railway, I concede that that company are entitled to be heard to ask for the usual protective clause. This will give them a *locus standi* against so much of clauses 2 and 9 as authorise interference with public roads, streets, or bridges crossing their railway.

Mr. RICKARDS: I think that a *locus standi*

against those clauses generally, taken in connection with their petition, would limit them to interference with their own works.

Wright: Both the companies claim to be heard in respect of the power taken by the corporation, under clause 17, to commute certain tolls. If they complain of the general impolicy of commuting these tolls they must complain as ratepayers, and as ratepayers they are represented by the corporation—they cannot be heard as single ratepayers. Moreover, clause 17 only proposes to commute these tolls by agreement, and, therefore, even if they could be heard as single ratepayers they would have no *locus standi*.

Mr. RICKARDS: Mr. Little's argument was that if the corporation chose to favour the other payers of customs, though that would not increase the proportion of customs payable by the London and North Western railway, it would affect them indirectly, because the borough fund would suffer, and, therefore, they as ratepayers would have to pay more rates.

Wright: That is a grievance *quod* ratepayers. Every new expenditure must fall on the ordinary rates, unless new rates are established for the purpose. It would be a perfectly new principle to lay down, that because a new head of expenditure is thrown on the existing rate therefore any ratepayer is entitled separately to be heard. Here, no power is taken to levy any new rate, or to alter the mode of levying any existing rate. It is only proposed to charge certain expenses for the first time upon the existing rate. (*Sheffield* case, 2 Clifford & Stephens 56; *Birmingham* case, 1 Clifford & Rickards 140; and *Milford* case, *ib.* 50.)

The CHAIRMAN (after deliberation): The *locus standi* of the London and North Western Railway Company is *Allowed* against clauses 2 and 9. The *locus standi* of the Midland Railway Company is *Disallowed*.

Agents for Bill, *Tahourdins & Hargreaves*.

Agent for the London and North Western Railway Company, *Roberts*.

Agents for the Midland Railway Company, *Beale, Marigold & Beale*.

LLYNVI AND OGMORE, AND CARDIFF AND OGMORE VALLEY RAILWAY COMPANIES BILL.

Petition of the TAFF VALE RAILWAY COMPANY, and the LLANTRISSANT TAFF VALE JUNCTION RAILWAY COMPANY.

23th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir H. D. WOLFF, M.P.; and Mr. RICKARDS.)

Railways—Amalgamation of—Lease to be converted into Amalgamation—Companies Proposed to

*be Amalgamated worked by third Company—
Competition—Too Remote—Alleged Alteration
in Status—Railways' Clauses Act, 1863.*

The bill proposed to amalgamate the Llynvi and Ogmore, and the Cardiff and Ogmore Valley railway companies, the latter line having been previously leased by the former company for 999 years, and both railways being worked under agreement by the Great Western railway company. The petitioners claimed to be heard on the ground that they were competitors for traffic with the companies proposed to be amalgamated, that the amalgamation would alter their *status* for the worse by introducing new conditions into the competition, and that, therefore, they were, by the rules of the Court, entitled to be heard against the amalgamation. They failed, however, to show any alteration in their *status* arising out of the bill:

Held, that they were not entitled to a locus standi.

The *locus standi* of the petitioners was objected to, because (1) they do not allege interference with any of their lands or property, rights or interests; (2) no diversion of traffic from, or competition with, either of the petitioning companies' railways can arise under the bill; (3) the proposed amalgamation is sought in pursuance of the provisions of an agreement entered into between the companies promoting the bill and the Great Western railway, which agreement was sanctioned by Parliament in 1875, and is scheduled to the Great Western Railway Act, 1875, and no powers are conferred by the bill upon the companies promoting it which are not now enjoyed by them, or capable of being exercised by them; (4) the bill provides for the fulfilment by the companies proposed to be amalgamated of all the liabilities and agreements of the Llynvi and Ogmore railway, and the interests of the petitioners are thereby protected; (5) nothing in the bill prejudices or affects any such arrangements or agreements as are alleged in the petition; (6) they are not entitled to a hearing according to practice.

Cripps, Q.C. (for petitioners): This is an amalgamation bill, and the principle which applies to all amalgamation bills applies here—that is to say, if the amalgamation alters the interests of the amalgamated companies, and induces them to do something to the prejudice of the companies not included in the amalgamation, which but for the amalgamation it would not be their interest to do, the companies likely to be so prejudiced have a right to be heard. We allege that we are owners of railways in South Wales, and that we are in possession of

and work the Llantrissant and Taff Vale Junction and Penarth railway. The railways so owned and worked by us form a route for traffic between the Ogmore and Ely Valley on the one hand, and Penarth and Cardiff on the other hand. The route consists of our railways on the side next Cardiff, of the Ogmore Valley railways on the side of the Ogmore Valley, and of the Ely Valley railways of the Great Western railway company, which intervene between the Ogmore Valley railways and our railway. The broad result is that the promoters' railway system—which is worked by the Great Western railway—and our own system are in competition, and the amalgamation proposed by the bill will create new features in this competition, and enable the promoters to compete both on more favourable terms and to import new conditions into that competition which will alter our status. The Llynvi and Ogmore and Great Western companies have relations with each other which already give them an identity of interest in antagonism to us. The proposed amalgamation will place in the hands of the amalgamating companies the entire control of the routes with which we are in competition. When this Cardiff and Ogmore becomes practically an integral part of the Great Western railway, as it would under this bill, we shall never get any of the traffic to Cardiff and Penarth. It is quite obvious that what is going to take place may work extreme injury to companies who would not have been injured if the companies now about to be amalgamated had remained unamalgamated. I do not rely upon any breach of faith set up by the petition, but on the fact of this being an amalgamation.

Tahourdin (for bill): The present bill does not affect the status of the petitioners, create any new competition, or abridge their rights in any way. The system of the petitioners and our own are physically unconnected. The piece of railway called the Ely Valley railway belongs to the Great Western railway, and the petitioners have no running powers over that intervening portion of the Great Western. There is no stipulation that the traffic shall be sent by this route, and by no other, but it is a simple agreement whereby facilities are given for certain traffic and for the interchange and general working of it. Supposing by this bill we sought to carry traffic between two points, between which the Llantrissant and Taff Vale people already carry it, that would be competition upon which they would have a good ground for a *locus standi*, but they ask to be heard on the ground of competition in respect of traffic which we now possess, and which they cannot get at except by running powers over our line.

Mr. RICKARDS: The short point is, whether the status of the parties is at all altered by this proposed amalgamation.

Tahourdin: The only thing the amalgamation does is to unite the two undertakings of the Llynvi and Ogmore and the Cardiff and Ogmore into one, and this amalgamation produces no change in the relative position of the amalgamated companies towards the petitioners, inasmuch as the Llynvi and Ogmore already

lease the Cardiff and Ogmore valley railway, and both are worked by the Great Western. The Railways' Clauses Act, 1863, is incorporated, and whatever right any companies claim against the companies to be amalgamated will be preserved to them.

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed*.

Agents for Bill, *Tahourdins & Hargreaves*.

Agents for Petitioners, *Dyson & Co.*

LONDON AND SOUTH WESTERN, MIDLAND, AND SOMERSET AND DORSET RAILWAY BILL.

Petition of (1) BRISTOL and NORTH SOMERSET RAILWAY COMPANY.

15th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Lease—Amalgamation—New Competition—Diversion or Obstruction of Traffic—Shortest Route—Governing through rate—Promoters Indebted to Petitioners for Land taken—Transfer of Liabilities—Remedy at Law—Railway Commission.

The bill proposed to hand over to the Midland and to the South Western companies the Somerset and Dorset line on lease for 999 years. The Bristol and North Somerset railway company petitioned on the ground that the London and South Western, by acquiring, through the amalgamation, command of the route between Radstock and Salisbury and Southampton, would create a competition more injurious than the competition now existing to the interest of the petitioners (who sent their coal and other traffic along the line of the Great Western railway as far as Salisbury), and that the Great Western traffic might be obstructed or postponed to the traffic which would use the newly-acquired route of the South Western all the way to Southampton. It was argued for the promoters that the Great Western route was the shorter of the two, and must, therefore, fix the through rate, and that it would not be likely to be obstructed or interfered with. The petitioners also claimed to be heard on the ground that the Somerset and Dorset Company, which were proposed to be amalgamated, were indebted to them for land at Radstock, taken from them, but it was

pointed out that the bill provided for the transfer to the promoters of all debts and liabilities of the amalgamated company, and that the petitioners could enforce their claims at law, or before the Railway Commissioners:

Held—apparently on the ground that the bill was of the nature of an amalgamation, in which case a larger latitude than usual is generally conceded to opponents—that the petitioners were entitled to a *locus standi* on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) no competition is alleged or will result from the bill; (2) no lands, railway stations, or accommodation will be taken; nor are running powers across or upon the same sought for; (3) if it be true (which is denied) that the Somerset and Dorset railway are indebted to the petitioners as alleged, that fact does not entitle the petitioners to be heard; (4) the suggestion that it would be the interest of the London and South Western company, if the bill should pass, to obstruct and prevent the passage of traffic over the petitioners' line is unfounded, and, even if true, does not entitle the petitioners to be heard, inasmuch as, if true, they would have a complete remedy at law; (5, 6, 7) the interest of the petitioners, as alleged in the petition, is too remote to entitle them to a hearing.

Little, Q.C. (for petitioners): A junction has been previously authorised between the Bristol and North Somerset and the Somerset and Dorset, but that junction has never been made, so that at present the communication between the Bristol and North Somerset and places south or south east is down to Frome and by way of Westbury to Salisbury, or by Frome down to Yeovil. There is an agreement with regard to through traffic between the South Western and the Bristol and North Somerset, but it is a terminable agreement, and has only about three years to run. Our case, therefore, is that at present we afford the most convenient route from Bristol to Yeovil, Southampton, and all places to the eastward on the South Western system. We also afford the most convenient and shortest route from Bristol to all places westward of Yeovil on the South Western system. If that junction were made, it would be the interest of the Somerset and Dorset to give facilities for our traffic by their route; but even if they do not feel it their interest to do so, we have the route by Frome down by Yeovil westward to Exeter, and eastward to Southampton, Portsmouth, and those places. If, however, these lines are amalgamated, as far as traffic from Bristol is concerned, the Midland will carry all the traffic from Bristol by Bath and over the Somerset and Dorset line, and keep it entirely off our line.

Mr. RICKARDS: What has become of the authorised junction?

Little : It has not been made, and the time has expired. The moment this amalgamation takes place, it will be the interest of the promoters to develop the traffic arising on the Somerset and Dorset line, and to discourage the traffic arising on our line. We are a competitive route to Bristol, and the bill will create a new competition. There is another reason for our being heard. The Somerset and Dorset railway company are indebted to us for land at Radstock taken from us, and we object to such land being vested in the London and South Western railway and Midland railway companies in the manner proposed by the bill, and without any proper protection to us.

Mr. RICKARDS : Are not all liabilities to be cleared off before the amalgamation takes place, or to be adopted by the amalgamated companies?

Clerk, Q.C. (for bill) : Yes; that is provided for by sec. 16 of the bill.

The CHAIRMAN : I think we may relieve you from replying on that point.

Clerk : With regard to the other point, the petitioners say that there are now two competing routes, the one going by the Somerset and Dorset to Templecombe and then by South Western; and the other by Frome and Westbury to Salisbury by the Great Western. They say that the Great Western company have not any running powers eastward from Salisbury, and that when the traffic gets to Salisbury it is at the mercy of the South Western, and that it is in the power of the South Western to delay traffic there. They say that they will be affected by the arrangement that will be come to, and that they will not afterwards be able to bring their coal so conveniently here as they do at the present time. Those contentions are entirely fallacious. The South Western company have at the present time an interest in traffic coming on at Salisbury, and they have an interest in traffic coming on at Templecombe, and they have now, by reason of the longer mileage, a much greater interest that the traffic should join their system at Templecombe than at Salisbury. The petitioners say that the Salisbury route by Westbury is the shorter route. If that is so, inasmuch as the shortest route must always fix the through rate, the South Western company would have to carry by the Somerset and Dorset, that is to say, by the longer route, at a rate equal to that charged by them for the shorter distance. If the bill were sanctioned, the South Western company would have the same interest in inducing traffic from Radstock to come to Templecombe as they have now. No existing competition advantageous to the petitioners is taken away, or any new competition injurious to them created by the bill.

The CHAIRMAN (after deliberation) : The *locus standi* of the Bristol and North Somerset is Allowed.

Agents for Petitioners, Frere & Co.

Petition of (2) COLLIERY PROPRIETORS in the RADSTOCK DISTRICT.

Amalgamation, Effect of, in increasing Competition—Traders and Freighters—Apprehended Obstruction to Existing Route arising from Amalgamation—Interest of Amalgamated Companies to Delay Traffic—Alteration in Status—New Competition from Fresh Districts—Preferential Advantages to Competing Traders—Remedy before Railway Commission—No bar to locus standi—Monopoly—Result of, Distinguished from Creation of Monopoly.

The petitioners were traders who sent coals from the Radstock district, *via* the Great Western line, to Salisbury, and thence by the South Western to Southampton, this being their shortest route for the conveyance of steam coal to that port. They maintained that if the amalgamation proposed by the bill were sanctioned, it would be the interest of the London and South Western to delay the forwarding of coal from Salisbury, so as to compel traders to send it round by Templecombe, thus traversing a longer mileage belonging to the South Western; also that it would enable the Midland to bring a quantity of coal to the southern ports from northern collieries, thereby favouring competitive traders in the North of England. For the promoters it was objected that they did not propose to raise the rates on the existing lines; that it would still be open to petitioners to send their coal by whatever route they preferred; and that, in case of traffic being delayed at Salisbury, the Railway Commissioners would, on appeal, put a stop to such practices:

Held, however, that the existence of a possible remedy before another tribunal for grievances which may arise under a bill is no valid answer to a claim to be heard in Parliament against the bill and that the interests of the petitioners were sufficiently affected to entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they do not allege, nor is it the fact, that any lands, &c., rights, or interests of theirs will be interfered with; (2) no alteration of existing fares or rates is proposed by the bill; (3) on grounds similar to those stated in objection 4, petition (1); (4) the petitioners are individual traders or freighters only, and do not represent the class generally; (5) the signatures of Countess Waldegrave and the Earl of Warwick are by procuration only

and informal; (6 and 7) the bill does not contain any provision affecting the petitioners, and the petition alleges no ground entitling them to be heard.

Round (for petitioners (2)) : Our case is very much the same as that of the Bristol and North Somerset railway. We contend that, inasmuch as the control of the railway accommodation of this district is going to be changed, we ought to be before the Committee in order to see that such facilities as we have should not be in any way prejudiced by reason of the district being handed over to one railway interest instead of remaining in the hands of two or three. We say that under this amalgamation the promoting companies will have an interest in taking the traffic in a particular way, which interest, so long as the lines remain unamalgamated, does not exist. As to the objection that we do not represent a class, out of 26 petitioners 15 are actually traders upon this line whose traffic is now handled by the Great Western. Supposing this amalgamation to be passed, the Midland company would be able to bring an enormous quantity of coal from the Midland district southwards in competition with us. Then, as regards coal traffic to Southampton, the Great Western at present get their rate from the point at which they handle our coal in the first instance to Salisbury, and then the South Western get their rate on the carriage of that coal from Salisbury to Southampton. When it gets to Salisbury the Great Western have done with it, and then the South Western handle it and take it to Southampton. As things stand at present, the London and South Western company have no interest in delaying our coal traffic at Salisbury, but the moment the South Western company have the entire control of the Somerset and Dorset, they will be able to handle the coal in the first instance and convey it over the line from Radstock to Evercreech and to Templecombe, and they would give greater facilities to that traffic.

MR. RICKARDS: Have not the colliery proprietors power to consign their coal by any route they prefer?

Round: At present their coals are taken by the Great Western only. Under the bill there will be a motive for delay at Salisbury. Unless we get our coals into Southampton as speedily as other colliery people about Radstock, we shall be subject to unequal competition. Under this amalgamation the coal of the other colliery proprietors will not be subjected to delay. It will be the interest of the London and South Western company, when they have got the Somerset and Dorset railway into their hands, to carry the coal over their line *via* Templecombe.

MR. RICKARDS: What would prevent anyone sending it by the Great Western *via* Salisbury?

Round: We might send it that way, but it would be the interest of the amalgamated companies to delay it at Salisbury.

MR. RICKARDS: I thought the Railway Commissioners were constituted for the purpose of putting a stop to such obstructions.

Round: They may stop such practices in flagrant cases, but not in small ones, which might equally lose us the market at Southampton.

Parliament has laid down the principle that when amalgamations of railway undertakings are proposed, an opportunity shall be given to traders to come in and complain of anything on the part of either of the amalgamating parties, and we claim that privilege now.

Clerk, Q.C. (for promoters): The contentions of the petitioners are entirely fallacious. The South Western company at the present time have an interest in traffic coming on at Salisbury and at Templecombe; but they have a much greater interest that the traffic should join their system at Templecombe by reason of the longer mileage than at Salisbury, and that interest will remain the same under the bill as before, it being now equally their interest, if at all, to cause delay at Salisbury. The case of the petitioners therefore remains the same, and there is nothing that the Committee could insert in the bill to benefit them. If they complain of traffic not being properly forwarded, the Railway Commissioners would apply a remedy.

MR. RICKARDS: The question is whether the existence of a tribunal, which can apply a remedy in the case of a company attempting to exercise a monopoly, is a reason against granting a *locus standi* to parties who complain that that monopoly will be created?

THE CHAIRMAN: The *locus standi* of the Petitioners is *Allowed*.

Agents for Petitioners, *Milne, Riddle, & Mallett*

Petition of (3) LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railways—Lease—Amalgamation—Competition—Neutral Gathering Ground of Traffic—Absorption of, through Amalgamation—Diversion of Traffic by—Injury too Remote.

Against a bill empowering the Midland and South Western companies jointly to take over the Somerset and Dorset railway, the London and North Western railway company petitioned on the ground that the Midland would give a preference to their own lines north of Birmingham to convey northwards traffic proceeding from the south western district, and that petitioners would thereby suffer a loss of traffic. They also complained that the bill involved the absorption by the amalgamating companies of a district which had hitherto served as a neutral gathering ground for the promoters and themselves. This gathering ground was the Somerset and Dorset railway, which had hitherto

sent traffic northwards indifferently by the Midland or the London and North Western. The promoters contended that there was no real competition between the petitioners and themselves in the south western district, and that the apprehended injury was too remote and uncertain to entitle the petitioners to a hearing :

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their petition does not allege, nor is it the fact, that any competition with the promoters will be caused by the bill; (2) no lands, railway stations, or accommodations of theirs will be taken, and no running powers upon or across the same are sought; (3 and 4) no specific injury is alleged by the petition, and the statement that, under the bill, the amalgamated companies will be able to divert traffic from the petitioners' railways, even if true, is not as specific as the S. O. require; (5) no such diversion of traffic is possible, and, if possible, it would be illegal, and there would be a remedy for it by the general law; (6, 7, and 8) the interest of the petitioners in the bill is too remote to be really affected, and there is no allegation in the petition to show the contrary

Pope, Q.C. (for petitioners): Our claim here is founded on the principle that, where there is a collecting ground, traffic from which, as long as it remains neutral, may impartially flow in different directions, the absorption of that district by one competing interest is a matter that entitles other competing interests to be heard. The Somerset and Dorset is a neutral collecting ground in this case. That collecting ground is proposed now to be absorbed by the Midland, which is a company competing with us. There is no distinction to be drawn between a lease and an amalgamation, and it makes no difference that the London and South Western company are partners in the transaction. Here the amalgamating companies enter into partnership to absorb the neutral district between them. The route passes over foreign railways, as in the last case. At present there is a neutral control of traffic, but this will not be the case when you amalgamate the companies, when all the traffic from or to the north will be sent over the Midland instead of the London and North Western. There can be no question of our being competitors with the Midland, when we both meet at Burton and Birmingham and compete for traffic thence over a considerable part of England. The Somerset and Dorset have hitherto sent traffic indifferently by the Midland, the Great Western, or ourselves, which, of course, they will not do for the future.

The CHAIRMAN: Can traffic arising on the Somerset and Dorset get to the London and

North Western without going on the Midland or the Great Western?

Pope: Yes; it can get to the London and North Western railway by the London and South Western, *via* Templecombe, without going on the Great Western.

Clerk, Q.C. (for promoters): The gathering ground here is said to be the Somerset and Dorset railway, but although the Midland and London and North Western are competitors nearly all over England, the present amalgamation cannot affect that competition. They only have connection with the London and South Western *via* London. The nearest points that the petitioners come to the amalgamated system are Oxford on the north, and London on the south. There can be no diversion of traffic here, and even if there were, the petitioners would have a legal remedy. The injury to them is altogether too remote, and there is nothing that could be inserted in the bill that could be of the slightest advantage to the petitioners.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, *Roberts*.

Petitions of (4) BRISTOL INCORPORATED CHAMBER OF COMMERCE AND SHIPPING; and (5) MERCHANTS, TRADERS, &C., OF BRISTOL; (6) MERCHANTS, TRADERS, AND FREIGHTERS OF SOUTHAMPTON.

Railway Amalgamation—Apprehended Injury to Trade from—Chamber of Commerce, Incorporated—Merchants and Traders—Double Petitions—Merchants and Traders the Proper Parties to appear—Representatives of similar Interests—Facilities for Goods' Traffic—Apprehended Loss of—Remedy at Law—Scheduling of Agreement.

The Bristol Incorporated Chamber of Commerce, and the merchants and traders of Bristol, as representing the trade and interests of Bristol, claimed to be heard upon separate petitions against a railway amalgamation bill, on the grounds that, by means of it, the carriage of goods between Bristol and Southampton, between which towns there was a considerable trade, would be diverted from its present route by the Great Western railway *via* Salisbury on to another route over the amalgamated lines; that the substituted route would be less convenient than the one at present used; and that the trade of Bristol would be consequently injured:

Held, that one of the two bodies of petitioners was entitled to appear, there being sufficient

ground for apprehending injury to the trade of Bristol, and that as it was unnecessary for both to be heard in the same interest, the merchants and traders were the proper parties to be admitted.

The petition (6) of merchants, traders, freighters, and inhabitants of Southampton, which was the other terminus of the railway communication formed by the amalgamated lines, was based on the same ground, and the arguments used in favour of their *locus standi* were similar to those in the cases of the other petitioners. Attention was also pointed to the language of the scheduled agreement as evidencing an intention on the part of the railway companies to "control" and divert traffic to the new route in which they had a joint interest:

Held, accordingly, that they were also entitled to a *locus standi*.

The *locus standi* of (4) the Bristol Incorporated Chamber of Commerce was objected to, because (1) they claim to be heard only as representing the commercial and trading interests of the city and port of Bristol, but they are not, according to the practice of Parliament, the proper parties to represent those interests; (2) they do not allege that those interests will be injuriously affected; (3) on grounds similar to those stated in objection 4, petition (1); (4) no alteration of existing fares or rates is proposed by the bill; (5, 6, and 7) their interests in the objects and provisions of the bill are too remotely affected to entitle them to a hearing.

The *locus standi* of (5) merchants, traders, &c., of Bristol, was objected to, because (1) except as regards the petitioners James Keen, D. S. Oliver, S. Cashmore, M. Blankenness, and G. W. Beebeo, the petition is not signed in manner required by the S. O., all the other signatures purporting to be those of firms or companies, and some of them being by procuration. Such signatures can be recognised, if at all, only as those of the individuals actually signing; (2) they are not entitled to be heard as inhabitants, because (a) the petition does not allege that the town will be injuriously affected; (b) the petitioners are too insignificant in number to be representatives; (3) they are not entitled to be heard as traders and freighters, because (a) they are individual traders only, and do not represent the class; (b) no existing rates or fares are altered or affected by the bill; (c) on grounds similar to those stated in objection 4, petition (1); (d) their interest, if any, is too remote; (4, 5) they are too remotely interested in the objects and provisions of the bill to entitle them to be heard against it.

The *locus standi* of (6) merchants, &c., of Southampton, was objected to, because (1) they do not allege that the town of Southampton will be injuriously affected; (2) or that any

lands, &c., rights, or interests of theirs will be interfered with; (3) on grounds similar to those stated in objection 4 to petition (1); (4, 5, 6, 7) on grounds similar to those stated in the corresponding objections to petition (4).

Chandos Leigh (for petitioners 4 and 5): Both these petitions are based on the same grounds. The petition of the traders is, however, the fuller, and therefore may be taken first. Traders of every description and of great importance petition, and we have a special connection with the town of Southampton, between which and Bristol a considerable traffic exists. At present we send our goods by the Great Western, via Salisbury; but, if the bill passes, the amalgamated company will prefer to carry goods between Bristol and Southampton by their own route, over which they will get the entire mileage to the exclusion of the Great Western.

Mr. RICKARDS: Will not the Bristol traders have the power of consigning their traffic by the Great Western if they prefer it?

Chandos Leigh: But if they do, the London and South Western will do all they can to delay it at Salisbury. The same arguments apply to the petition of the Chamber of Commerce. Traders and freighters who can make out a *prima facie* case of injury to their interests are allowed a *locus standi* if they petition as a class (1 Clifford & Stephens, *test.*, 49); and in *Great Western and Bristol and Exeter Companies' Bill* (b. 132) the *locus standi* of traders was allowed. I shall not press the second petition if the Court allows a *locus standi* on either.

Pembroke Stephens (for traders, &c., at Southampton): Although our case is virtually the same as the last, and the arguments that hold good in the other petitions generally are good here, there are one or two points peculiar to our case. In the first place, there is no objection that we are represented by anybody else; in the second place, the promoters have not traversed the allegation in the petition in which we describe ourselves and the nature of our interests. They have not made any objection to the sufficiency of our signatures, and they have not objected to our statements as regards the competing route. They take against us the objection (3) that we shall be protected by the general law. If the general law is good for us, it is good for them; but they propose to alter the general law for their own benefit. By clause 20 the scheduled agreement is confirmed "as if it were expressly enacted" in the bill, and therefore when we go before the Railway Commissioners to complain under the general law, both we and the Court will be bound by this special legislation. The third article of the agreement defines the principle on which the undertaking is to be worked hereafter—"of securing as much profit from it, considered as a separate property worked in friendly alliance with the undertakings of the Midland and South Western Companies, as is from time to time compatible with the requirements of the public in respect of local as well as through traffic, and with proper economy." And the tenth article furnishes the key to the mode in which the companies will secure the profit from this particular route—"All such traffic shall, so far as the companies

practically and reasonably can control the same, be booked through from its station of origin to its destination." With both termini in the hands of the agreeing railway companies, and with these articles expressly enacted, will it not be a mockery to refer the traders to the general law? As to the obstruction of traffic at Salisbury by the amalgamated companies, ours is a stronger case even than that of the traders of Bristol, because they can get to Salisbury by the Great Western line, but we are entirely in the power of the South Western, both the routes which lead from Southampton to Bristol being, at the Southampton end, in the hands of the South Western company.

Clerk, Q.C. (for promoters): All three sets of petitioners are voluntary and undefined bodies, and no *locus standi* of a Chamber of Commerce has ever been allowed. As to the traders, they are not sufficient to represent trade, nor do they really allege injury.

Mr. RICKARDS: Are the allegations of the petition of the Chamber of Commerce similar to those of the traders?

Clerk: Yes; they are the same.

Mr. RICKARDS: If so, it would seem to be unnecessary to give a *locus standi* to both parties, and of the two the traders would seem to be the proper parties to appear. The Chamber of Commerce do not complain of any injury to themselves, but they wish to give their opinion upon the question.

Clerk: They claim to represent the commercial interests of the trade, but there may not be a single trader among them. The traders of Bristol who sign the petition only represent thirty firms, who, for all we know, may be shareholders in the Bristol and Exeter. As regards the articles of the agreement which have been referred to, they are in the ordinary form, and no special significance need be attributed to their language.

The CHAIRMAN: The *locus standi* of the Bristol Chamber of Commerce is *Disallowed*. That of Merchants and Traders of Bristol and Southampton is *Allowed* in both cases.

Agents for Petitioners (4 and 5), Dyson & Co.

Agents for Petitioners (6), Sharpe & Co.

Petition of (7) DOWAGER COUNTESS OF WALDEGRAVE and LORD CARLINGFORD.

Lease of Railway—Railway to be Leased, Creditors of, for Land—Accommodation Works, Agreement for Constructing—Questions Pending before Board of Trade—Set-off of Creditor against Railway Company—Arrangements for Discharging Debts due by Railway Company—Interfered with by Lease of Line—Arrangement Terminable at Pleasure—Change in Status.

The petitioner, the Countess Waldegrave (whose husband, Lord Carlingford, also signed the petition) was a creditor of the Somerset and Dorset company for land belonging to her, over which that company had obtained compulsory powers under an Act of 1871. The land was still unpaid for, and under the bill the company would be empowered to lease their line for 999 years to the Midland and the South Western companies. At the time when compulsory powers were obtained over Lady Waldegrave's land, the company agreed to erect accommodation works for her benefit, but had hitherto failed to carry out that agreement, and this fact was used as an additional argument in favour of the petitioner's *locus standi*. This matter was, however, at the present time, before the Board of Trade. The main ground on which the petitioner claimed a *locus standi* was that, pending the payment for the land taken under the Act of 1871, she had been sending coal from her collieries over the company's lines free, the freight charges being treated as a set-off to the money due to her for the land. This arrangement was to the petitioner's advantage, and would, it was argued, be put a stop to by the discharge of the company's obligation to her, should the lease proposed by the bill be sanctioned:

Held, that inasmuch as this was an arrangement terminable at any moment at the pleasure of the parties, and the bill would presumably place the Somerset and Dorset company in a better position to discharge their obligations, there was no change in the legal status of the petitioners entitling them to be heard.

The *locus standi* of the petitioners was objected to, because (1) no lands, rights, &c., of theirs are interfered with; (2) the grounds of complaint urged against the Somerset and Dorset railway company even if true do not entitle the petitioners to a hearing; (3 and 4) the petition does not show in what way, nor is it true that in any way the injury (if any) which the petitioners have sustained will be aggravated by the bill; (5) the bill does not alter the rates or tolls which the Somerset and Dorset company are now authorised to take; (6 and 7) the bill contains no provisions affecting the petitioners, and they have no such interests in its objects and provisions as entitle them to be heard.

Round (for petitioners): Our grounds of complaint against the Somerset and Dorset are that they obtained in 1871 compulsory powers over a

considerable quantity of our land, and have not completed the purchase; that they undertook to make certain special accommodation works, and with one single exception they have not made any; and that the bill aggravates the injury we have already sustained. We cannot come to any sort of terms with the Somerset and Dorset company, and they hold us at arm's length.

Clerk, Q.C. (for promoters): The matter is now before the Board of Trade.

Mr. RICKARDS: The question is, how the bill affects the petitioners?

Round: We allege that we shall be in a worse condition than we are at the present time. The petitioners have, in consequence of their inability to get any money from the Somerset and Dorset company, refused to pay for the carriage of their coals by the company. There is now, therefore, a running account between us. We have a set-off against their claim for freight, and they have acquiesced in that arrangement. If the bill passes, we shall not have the benefit of this arrangement.

The CHAIRMAN: The Somerset and Dorset can stop it at any time.

Round: But there is little fear of their doing so as long as they are left alone in their present position.

Mr. RICKARDS: The question is, whether this bill will alter the legal rights of Lady Waldegrave?

Round: It will put her in a less desirable position than she is now, although it may not actually alter any rights which she can enforce.

Mr. RICKARDS: You and the Somerset and Dorset stand in the relation of debtor and creditor. We do not see how you are deprived of any remedies you now have by this proposed amalgamation.

Round: Everything belonging to the Somerset and Dorset will be handed over to the Midland and South Western companies.

Mr. RICKARDS: It is to be presumed that the Somerset and Dorset will have their position improved by this lease, and the question is whether yours will be altered for the worse.

Round: Lady Waldegrave also says she is a colliery owner.

Mr. RICKARDS: She signs the other petition as a colliery owner?

Round: Yes.

Clerk (in reply): Lady Waldegrave's position as a creditor of the Somerset and Dorset company will remain the same after the bill as before it. The arrangement referred to between herself and the company is merely on sufferance.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, Sherwood & Co.

Petition of (8) LONDON, BRIGHTON, AND SOUTH COAST RAILWAY COMPANY.

Transfer of Line—Continuous Through Route—Avoiding Metropolis—Existing Route—Interests

in—Agreement—For Terminating Competition—Joint Purse—Division of Traffic Receipts—Agreement, how far Binding—Partner forming New Alliances—Other Possible Routes—Allegations in Petition—Sufficiency of.

A railway company, owning one of the two lines leading from London to Portsmouth, and having an agreement as to joint-purse and division of traffic with the South Western company, who owned the second line between those two points, opposed the bill for the transfer of the Somerset and Dorset railway to the Midland and South Western companies jointly, on the ground that a new and continuous through route would thereby be formed in the hands of those two companies, by means of which, traffic from the Midland districts, intended for Portsmouth, could be carried over the South Western system to that point whilst avoiding London, and thereby also avoiding the necessity of bringing the receipts from such traffic, under the agreement, into the joint-purse. The South Western company admitted that traffic *via* London would be divisible with the petitioners under the agreement of 1862, but denied that under that agreement they were precluded from entering into arrangements with other companies, or from receiving traffic for Portsmouth at other points of their system than London, and alleged that another route had, in fact, been opened in 1871, by which traffic might equally have reached Portsmouth without passing through the metropolis. The agreement itself described the joint traffic as that "carried on either line for the whole distance between London and Portsmouth." The promoters also objected to considerations, other than those directly bearing on the agreement of 1862, being brought into discussion, the petition being somewhat narrowly framed:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the Brighton railway company was objected to, because (1) there would be no sufficient competition according to practice; (2) no lands, stations, &c., or facilities were taken affecting the petitioners; (3) the agreement between the two companies on which the petitioners rested their case was in no way affected by the bill; (4) injury (if any) as to traffic from Birmingham and places further north was too remote; (5) there was no provision of

the bill affecting petitioners ; (6) they had no claim to a hearing.

Pembroke Stephens (for petitioners): The preamble of the bill plainly admits that "a continuous through route" is to be created, by means of the Somerset and Dorset line, between all places on the Midland and South Western systems respectively. Hence this will be a virtual amalgamation.

Clerk, Q.C. (for promoters): Your argument must be confined by the terms of your petition to the agreement.

Stephens: The relative positions of the lines of railway must be understood. The South Western is at present an east and west line merely ; henceforward it will have an arm pointing north and south as well. In pursuance of the agreement of 1862 we have expended considerable sums on joint works at Portsmouth, and both parties, hitherto, have worked in good faith under that agreement, the object being to avoid all rivalry as to traffic from London to Portsmouth, and secure an equitable division of the gross receipts on whichever line they may have been earned. London has been the cup into which traffic has been poured by the northern railways, e.g., armour plates from Sheffield, beer from Burton, and so on. In future, however, the South Western, instead merely of drawing its proportion of earnings from the joint-purse, will have the strongest inducement to attract traffic on to its own line separately by means of the new route *via* Bath. Our friends hitherto will thus become our enemies and rivals, and it is no use arguing that the agreement of 1862 is undisturbed, when the traffic on which it was to operate has been taken away.

The CHAIRMAN: The question is whether the agreement only referred to the state of things existing at the time it was made, or whether it was to be applied to all future states of circumstances ?

Stephens: It is against the proposed change of circumstances that I am seeking to be heard. The decision as to the three railway companies petitioning against the *South Eastern and Brighton Companies' Bill*, 1868 (1 Clifford & Stephens 103), seems very much in point.

Clerk (in reply): The agreement of 1862 discloses the object for which it was entered into—namely, to put an end to competition, as regards these two companies, for traffic "between London and Portsmouth and the neighbourhood thereof respectively," both these terminal points being carefully defined by reference to well-known points and boundaries on each of the railway systems. The agreement is confined to traffic arising within the specified limits, and makes no reference as to the mode in which traffic is to enter London before it gets on to the Southern lines, or is to leave London after it has passed out of their hands. Accordingly, as to all other than traffic *via* London the agreement is silent. The day after the agreement was signed the South Western, if so minded, might have exchanged Birmingham traffic with the Great Western at Basingstoke ; and more recently, in 1871, the new route *via* Bath and Evercreech was authorised, and equally avoids London. The fallacy in the petitioners'

argument lies in supposing that there is something in the agreement of 1862 to bind the relations of these two companies, and restrain them from agreeing or co-operating with other railway companies. We do not alter a word in the agreement of 1862 ; and we do not create any new competition, for the Somerset and Dorset is an existing line. If any further allegations are relied on they would be outside the petition.

Locus standi Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *Rees.*

LONDON AND TILBURY, DARTFORD AND KENT COAST JUNCTION RAILWAY BILL.

Petition of the EAST LONDON, and LONDON, BRIGHTON, AND SOUTH COAST RAILWAY COMPANIES.

8th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman ; Sir JOHN DUCKWORTH ; Mr. RICKARDS ; and Mr. BONHAM-CARTER.)

Railway—Tunnel—River—Rival Communication under—Railways North and South of Thames—Connection of—Report of House of Lords Select Committee, 1863—Competition—Apprehended, not Actual—Injury too remote.

A bill, having for its object to authorise the construction of a railway commencing at Purfleet, in Essex, by a junction with the London and Tilbury railway, crossing the Thames by a tunnel, and forming junctions at separate points with the South Eastern and Chatham and Dover lines, was opposed by the East London and Brighton companies (joining in the same petition) on the grounds of competition, and of alleged departure from the principles of metropolitan railway communication as laid down in 1863 by the Select Committee of the House of Lords. The promoters replied that whatever the original intention might have been, the East London railway afforded but a local and not a general communication between railways north and south of the Thames, and that, a distance of twelve miles intervening between the tunnels, the interests (if any) of the petitioners were too remote :

Held, that they were not entitled to a *locus standi*.

The *locus standi* of the two railway companies was objected to, because (1) no lands, property, &c., of the petitioners were taken; (2) no powers or facilities were taken over or affecting the railways; (3) no competition would be caused within the meaning of the S. O.; (4) there was no such communication as alleged between the East London railway and the Chatham and Dover railway, and the authorised junction with the South Eastern was not suited for through passenger traffic, or likely to be used for traffic of the district accommodated by the promoters; (5) no sufficient interest existed or was alleged.

Ledgard (for petitioners): The East London railway, which is worked under statutory powers by the Brighton company, runs from the Great Eastern railway near Bethnal Green, under the Thames, to the Brighton line at New Cross, and joins the South Eastern near the Old Kent Road. The junctions with the Great Eastern and South Eastern have yet to be put in, but the rest of the line has been made. When completed, our undertaking by means of the systems which it connects and their junctions with other lines, will give effect to the recommendation of the House of Lords Select Committee in 1863, on the subject of uniting, in the most direct and convenient manner, the whole of the railways north and south of the Thames. The proposed line of the promoters crossing the Thames lower down, in a parallel line, must be in direct competition with us, as there is no local traffic which can be served, and its aim must therefore be to connect the railways north and south of the river. Until experience has tested the efficiency of the East London line for this purpose a second line cannot be necessary; at any rate, we have the most direct interest in raising the question before the project is sanctioned.

Pembroke Stephens (for promoters): Our line crosses the river at a point twelve miles distant from the petitioners. Parliamentary powers to carry a railway through the Thames tunnel can hardly be stretched to the extent of prohibiting other railways from crossing the river at such a distance, seeing that other and existing railways at Blackfriars, Charing Cross, and Battersea already give communication in a north and south direction. The contention of the petitioners is much too wide. Whatever the design may have been, they now only connect one fork of the Great Eastern with the Brighton line. As to the South Eastern, they have no running powers over it; accordingly, they do not form a connecting link between the southern and any of the northern railways. If they are unable to convey an ounce of traffic from the northern lines to the southern lines, how can they be injured by abstraction of such traffic? Mere apprehension of possible future injury will not suffice; there must be some specific provision of the bill injuring the petitioners to entitle them to a *locus standi*. (*Manchester, Sheffield, and Lincolnshire Railway Bill, 1874*, 1 Clifford & Rickards 99.) [*He was then stopped.*]

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Agent for Bill, *Bell.*

MANCHESTER, SHEFFIELD AND LIN. COLNSHIRE RAILWAY BILL.

Petition of the MIDLAND RAILWAY COMPANY.

23rd March, 1876.—(*Before Sir JOHN ST. AUSTIN, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Railway—Competition—Partnership—Joint Committee of Promoters' and Petitioners' Companies—Transfer of third Railway by agreement—Competing Line Proposed by Constituted Joint Committee—Agreement not confirmed by Parliament—Breach of—Competing Bills.

The bill was one for authorising the Manchester, Sheffield and Lincolnshire railway company (*inter alia*) to make a new line, commencing by a junction with the Manchester South District and Altrincham railway, and terminating by another junction with a railway authorised by the Manchester South District Railway Act, 1873. The proposed line would be in direct competition with the Manchester South District railway company, who petitioned against the bill, and whose *locus standi* was not disputed. The petitioners had entered into agreements, first, with the Manchester South District railway company for the purchase of their railway; and, secondly, with the promoters to join them in such purchase; the railway to be vested in the Midland and Sheffield companies' committee, along with several other undertakings already managed by this joint committee. The petitioners were bringing forward in the present session a bill to confirm this agreement and vest the South district railway jointly in themselves and the promoters. They alleged that their bill and the bill now before the Court must be treated as competing bills; and they complained that, in proposing lines in competition with the South district railway, the promoters were violating the agreement into which they had voluntarily entered. The promoters *contra* argued that the agreements for purchase and for the joint vesting could have no effect, not having been confirmed by Parliament, and pointed out that the question of competition was sufficiently raised by the petition of the Manchester South District company:

Held, however, that there was such a breach of agreement as entitled the petitioners to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are interfered with; (2) no line of railway which they own or are lawfully interested in will be in competition with the railways proposed; (3) they have no right to be heard by reason of any agreement subsisting between them and the Manchester South district railway company, which agreement has not yet been sanctioned by Parliament and cannot therefore have any effect. The proper parties to be heard on the score of competition with the Manchester South district company are that company themselves, who have petitioned against the bill; (4) they are not entitled to be heard according to practice.

Chandos Leigh (for petitioners): The railways proposed to be authorised are in great part nearly parallel to, and a short distance from, part of the Manchester South district railway, and would compete with that railway for traffic. In 1875 we agreed with that railway company as to the terms upon which their powers to construct and maintain their railways in that district should be transferred to us, and as we have in common with the promoters several joint railways in the neighbourhood, we made an offer to them to join us in the purchase of the South district undertaking. That offer was accepted by their directors, and a bill is now being promoted by us for the transfer of the powers of the South district company to the Sheffield and Midland railway companies' committee, which is a joint committee constituted by Act of Parliament, consisting of representatives of both companies. We submit that as the promoters have agreed to become joint owners of the South district railway, their promotion of competing railways is inconsistent with that engagement. The *locus standi* of the Manchester South district company could not be disputed, and, having become by agreement joint owners of that railway, we claim a *locus standi* on the ground of competition *plus* a breach of agreement. The Manchester and Sheffield, and the Midland company obtained joint lines in 1869, which were put under the management of the Sheffield and Midland joint committee. The Midland company this year, in their Further Powers Bill, are proposing (amongst other things) to transfer formally under their Act the Manchester South district railway, not to themselves alone, but to the Sheffield and Midland committee; and that being now the state of affairs, and the Manchester, Sheffield, and Lincolnshire company having agreed to join in that purchase, they bring in another bill for the purpose of promoting a new line competing with the South district railway which they have agreed with us to purchase. It is a case of one of two partners starting a competing business unknown to the other.

Worsley (for promoters): The Manchester South district company is an independent company, and by their Further Powers Bill, the Midland are now asking Parliament for leave to purchase this undertaking, and vest it in the Sheffield and Midland companies jointly. At present, however, the Midland does not possess either power.

Mr. RICKARDS: But their bill proposes to confirm an existing agreement?

Worsley: No doubt; but at present the powers appertaining to the South district company are entirely in its own hands. That company is petitioning against the bill on the ground of competition, and its *locus standi* is not disputed. The Midland company can have no separate interest in the matter from that of the South district company.

Mr. RICKARDS: As we understand, the agreement is an existing agreement, and it is merely proposed to confirm it?

Worsley: I do not know that it is more than an understanding. There is no agreement scheduled to the bill.

Chandos Leigh: The Sheffield company themselves have elected to become partners in the transfer of the Manchester South district company.

Mr. PEMBERTON: If the agreement had been complete, would not the *locus standi* be clear?

Worsley: No doubt.

The CHAIRMAN: The *locus standi* of the Midland Railway Company is Allowed.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

Agents for Petitioners, *Beale, Marigold & Beale*.

NORTH BRITISH RAILWAY (ADDITIONAL WORKS, &c.) BILL.

Petition of the GLASGOW AND SOUTH WESTERN RAILWAY COMPANY.

20th March, 1876.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Railway—Land Scheduled by Railway Company for Station—Part of Scheduled Land Occupied by Lines—Solum of Lines Vested in two Companies—Statutory Rights of User by other Associated Companies—Not Reserved by Bill—Joint Committee for Regulating Traffic—Notice by Promoting Company to Associated Companies—Promise of Solicitor to Reserve Existing Rights—How far Binding—Joint Occupation or User of Scheduled Land—Claim to Locus Standi Founded on.

By the Carlisle Citadel Station Act, 1873, two railway companies, the North Western and Caledonian, obtained powers to take certain land at Carlisle, and to construct thereon lines which were to be used by themselves and three other companies for purposes of goods' traffic. In 1856, two of the associated companies, the North British and Midland, had obtained statutory powers to acquire the same land, with other adjoining land, for the construction of a goods'

station, but the powers had been allowed to lapse. The North British company now promoted a bill to revive these powers, and with the same objects; and they served with notice each of the associated companies in respect of the land over which they had joint rights of user under the Act of 1873. One of these companies, the Glasgow and South Western, had in 1866 promoted a bill to obtain the same site for a goods' station, which, by agreement, would then have been used jointly by themselves, together with the North British and the Midland companies; but their bill was unsuccessful. They now petitioned on the ground that, as one of the associated companies, they had statutory rights of occupation and user over that part of the scheduled land traversed by the joint lines; and they alleged that they opposed the bill, not with a view to prevent the North British from acquiring the whole site, but to prevent their own exclusion from the new station, there being no other land at Carlisle available for the purpose. It appeared that the solicitor of the promoters had written to the petitioners, stating that their rights would be reserved in the bill; but, in fact, it contained no such reservation:

Held, that upon these facts the petitioners had such an interest in the subject-matter of the bill as entitled them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they are not interested in the land mentioned in the petition as owners, lessees, or occupiers, nor have they Parliamentary powers to acquire such lands or any part thereof; (2) they are not, under any subsisting agreement, entitled to share in any station to be constructed on this land, or in any other use or enjoyment of it; (3) they were not parties to the agreement between the promoters and the Midland railway company set forth in the schedule to the North British Railway Act, 1866, and referred to in the petition, nor are the parties to that agreement under any obligation to admit the petitioners to share in the benefits of that agreement; (4) whatever rights they might have acquired under their bill of 1866 were lost by the rejection of that bill, and they have acquired no similar rights by subsequent legislation; (5) the bill deprives the petitioners of no existing right, power, or privilege vested in or belonging to them, and they have no interest entitling them to a *locus standi* according to practice.

Cripps, Q.C. (for petitioners): The question now raised is one of great importance, because

at Carlisle the traffic of the Scotch and the English lines is exchanged, and the land now sought to be taken by the North British is the only spot at which it would be possible for us hereafter to construct a goods' station. We contend not so much that the North British should be prevented from buying this land, as that, whichever company buys it, rights over the land should be reserved to the other company. In 1866, as the result of an agreement between the Midland and the North British companies and ourselves, we introduced a bill empowering us to buy this land for the joint use of the three companies. Our bill, however, was thrown out upon the opposition of the Caledonian company, who contended that, up to 1874, we were bound to use their station at Carlisle. Thus the agreement with the Midland and North British could be carried no farther, and it was not till 1874 that we became free to seek at Carlisle for an independent goods' station. Meanwhile, in 1868, the North British company promoted a bill scheduling an agreement between themselves and the Midland company, which provided for the joint use and regulation of the goods' station at Carlisle. Had our bill passed in the same year, this agreement would have been superseded by the agreement between the three companies; but our bill was lost and the North British bill passed. The powers therein granted to them for the compulsory purchase of this land have, however, been allowed to expire, and they now come, therefore, as in 1866, for fresh authority to buy this land for the purposes of their goods' station.

The CHAIRMAN: They are now in the same situation as if they came for the first time to purchase it?

Cripps: Yes; and we also are in the same position relatively to the North British company as we then were.

The CHAIRMAN: But have the Glasgow and South Western company any sort of legal claim or right or interest as regards this land?

Cripps: The facts are these:—Under the Carlisle Citadel Station Act, 1873, the London and North Western and Caledonian companies were authorised to make lines upon a portion of this land to accommodate the goods' traffic of the Caledonian, Midland, Glasgow and South Western, North British, and London and North Western companies, and "a goods' traffic committee," consisting of two directors nominated by each company, was appointed to determine all matters of difference. The effect of this Act is to make each company joint occupiers of these lines of railway. If they are not owners to whom the land has been assigned in perpetuity, at all events the use of the lines, which cover a portion of the *locus in quo*, has been given to each of the five companies in perpetuity, and I do not know of any difference between an owner and an occupier for purposes of *locus standi*. The promoters have recognised our rights as owners or occupiers by giving us notice in respect of these lines; and, in a similar case. Mr. Dodson said that service of notice was a circumstance to be taken into account, though it was not to be regarded as conclusive. (*1 Chif. ford & Stephens 4.*)

Mr. RICKARDS: In whom vests the *solum* of these lines?

Clerk, Q.C. (for promoters): Solely in the North Western and Caledonian companies; the other companies merely have running powers over them.

Mr. RICKARDS: Does the North British then propose to purchase the land from the North Western and Caledonian companies?

Clerk: No.

Cripps: Assuming that we have a right of user over these lines, we are as much established there as the company to whom, for convenience sake, the land is conveyed. It is clear that we have statutory rights in the land, under the Act of 1873, and those rights are not affected by the mere vesting of the land in two other companies. The Act which made them owners reserved an occupation to us for the purposes of our traffic. We have a statutory occupation, with which nothing but another Act can interfere. This being so, we have not only been rightly served with notice, but the North British solicitor, in sending us copies of the plans referring to these lines, writes that no conveyance having been made to the joint committee, a clause would be inserted "saving the rights of the joint committee, and of the companies having rights to use the lines." This is a concession by the promoters' solicitor that we have rights which they propose to reserve.

Mr. RICKARDS: Does the bill contain such reservations?

Cripps: It does not. It authorises the North British to purchase this land, and to conclude the rights of everybody upon it. Now we do not wish to prevent the North British from taking the ground for their goods' station, but we seek to prevent our exclusion from it, which would be an injustice to ourselves, and a public inconvenience.

Clerk (in reply): We simply propose to renew our statutory powers over land which we were authorised to purchase in 1866, for the purpose of constructing a joint station for the North British and Midland companies. It is said that a new state of things has arisen since the passing of the Citadel Station Act of 1873. In that year the Glasgow and South Western and North British companies disputed as to the ownership of this land, and after much discussion it was decided that the lines should be vested in the North Western and Caledonian companies, subject to user by the petitioners and other companies. It is clear that an inchoate agreement, entered into in 1866, and embodied in a bill which came to nothing, can give the petitioners no *locus standi* against our bill which merely seeks the revival of powers granted to us in 1866; nor have they such an interest in this land under the Act of 1873 as entitles them to a *locus standi*.

The CHAIRMAN: You gave them notice, and your solicitor proposes to insert in the bill a clause saving the rights of the joint committee and of the companies having the user of these lines. That provision would include the Glasgow and South Western?

Clerk: Yes; the conveyance to the North Western and Caledonian companies has not yet

been completed, and, therefore, we schedule the whole of the companies using these lines, including the petitioners; but without supposing that they had the slightest title to appear in right of occupation.

Mr. RICKARDS: The promise of your solicitor to reserve in the bill the rights of the petitioners is very like an admission that they have some rights which require to be saved.

Clerk: Such a letter will give no right to a hearing, if it is clear upon the allegations in the petition that there is no substantial grievance.

Mr. RICKARDS: If the bill contained nothing affecting the rights of the petitioners, then the letter was idle and irrelevant. But the notice and the letter both tend to the same conclusion, that the petitioners have some interest which requires protection, and, if so, they ought to be heard to defend it.

Locus standi Allowed.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Loch.*

NORTH WALES NARROW GAUGE RAILWAY.

Petition of ALBERT GRANT and MAURICE GRANT.

27th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir H. DRUMMOND WOLFF, M.P.; and Mr. RICKARDS.)

Railway—Abandonment of Part of Undertaking—Costs' Clause—Agreement—Rights of Creditors Under, not Reserved by Bill—Manifest Invalidity of, Alleged—Court will not Inquire into—Legal or Equitable Remedy, Alleged want of—Preliminary Expenses—Loan on Account of—Secured on Special Fund.

In 1872 a railway company obtained an Act to construct the M. railway, together with other lines, which were distinguished from the M. railway under the name of "the general undertaking." The Act contained the usual costs' clause, and, soon after it passed, the company borrowed £7,000, from Messrs. Grant under an agreement, which provided that the money should be applied towards preliminary expenses, and should be repaid out of the first capital raised for the purposes of "the general undertaking," and not out of money belonging to the M. railway. In 1875 the M. railway was in course of construction, but nothing had been done to carry out "the general undertaking," and the company's powers of compulsory purchase for that purpose then ex-

pired. None of the share capital had been subscribed, and the power to construct "the general undertaking" would cease in 1877. The company now promoted a bill authorising them to abandon "the general undertaking," and to raise further capital for the purposes of the M. railway. Messrs. Grant petitioned against the bill, alleging that it would disable the company from creating the sole fund out of which creditors under the agreement could be paid; that, as the winding-up of the company was not contemplated, the bill contained none of the ordinary provisions in favour of creditors; and that, if passed, it would operate as a statutory release to the company in respect of the petitioners' claim. In reply, it was objected that the agreement was invalid on the face of it, as it sanctioned the borrowing of money by the company before any share capital had been subscribed; that the petitioners, having thus no legal or equitable remedy, were not entitled to a Parliamentary remedy; and that, as it was no longer possible for the company to raise the only fund upon which the petitioners had any claim under the agreement, their rights would not be affected by the abandonment:

Held, that the Court could not go into the question of the validity of the agreement, and that, "as the rights of creditors were not reserved by the bill, and the petitioners might be creditors on a fund which the bill would render it impossible to raise," they were entitled to a general *locus standi*.

(*Per Cur.*) "The claim of a creditor does not usually arise for payment out of a particular fund. His claim is against the company generally, and the reason why he has not a *locus standi* is because he has a remedy at law.

"If a man says he has no remedy except by coming to Parliament, the Court will not stretch a point to shut him out."

The Act of 1872 authorised the company to construct a railway called the Moel Tryfan line and other works. These works were distinguished from the railway mentioned, and were in the Act described as "the general undertaking."

The bill now proposed to abandon the general undertaking—leaving the Moel Tryfan line in process of construction—and to raise further

capital for the purposes of that line. After the passing of the Act of 1872, the company borrowed from the petitioners the sum of £7,000, under an agreement (dated December 30, 1872), which recited that the company had immediate necessity for that sum in payment of preliminary expenses, and the expenses of passing their Act, and there were covenants that the £7,000 should be solely applied for these purposes, and that repayment should be made by the company "out of the first capital raised by them in respect of their general undertaking, and not out of monies belonging to their Moel Tryfan undertaking." The Act contained the usual costs' clause, and the petitioners complained that the bill contained no reservations of the rights of creditors and would deprive them of the remedies open to them under the agreement.

The *locus standi* of the petitioners was objected to, because (1) they are not owners, &c., of any lands, &c., authorised to be taken for the railway sought to be abandoned; (2) the contract with the petitioners, referred to in their petition, does not create any security or charge upon the railway proposed to be abandoned; (3) there are no assets or property of the company out of which the petitioners' claim is payable, or can be paid, as, by the contract with the petitioners, their rights are expressly limited to payment out of capital raised in respect of the general undertaking, and, as no such capital has been raised, the petitioners have no right or claim against the company in respect of their advance entitling them to be heard against the bill; (4) the powers of taking land for making the railway having expired, and no capital having been raised for the purposes of the general undertaking, the petitioners' rights will not be affected by the abandonment or by the bill; (5) the contract on which the petitioners' claim is founded was, at the date thereof, to the knowledge of the petitioners, and is now, unlawful and void; (6) the petitioners have no interest in the objects or provisions of the bill entitling them to be heard.

Ridley (for petitioners): The promoters seek to get rid of the obligation to raise the capital on which we have a claim, and so to deprive us of our rights under the agreement. As to the objection that the agreement is void, the Court will not go into that question, which is really one of merits as well as of law. For purposes of argument we must assume that it is a valid agreement; and then we find the company trying to disincorporate themselves, partially, not wholly, in order to free themselves from part of the obligations they took upon themselves in 1872.

The CHAIRMAN: Does not the bill preserve your rights by incorporating the ordinary provisions for winding-up the company?

Ridley: No. We should not be here if the bill contained the ordinary provisions under which we could have come in as creditors.

Burt (for promoters): This is not a winding-up of the company, which continues for other purposes.

Ridley: Our rights under the agreement are confined to capital to be raised in respect of the general undertaking only, and the power to raise

that capital will be gone if the bill passes. The company are therefore seeking not only a release from the obligation to construct the works comprised in the "general undertaking," but a statutory release from all the obligations they have incurred in respect of that undertaking.

Mr. RICKARDS: They seek to destroy the fund out of which they have agreed to pay you?

Ridley: Yes; though the undertaking as a whole has had the benefit of our money.

Mr. RICKARDS: Have you not under the agreement a remedy at law or in equity?

Ridley: No.

The CHAIRMAN: Suppose the matter remained in abeyance, and the company did not come for a bill to abandon the general undertaking, could you compel the company to raise the capital for the general undertaking? You have to show that your position would be affected by the passing of the bill.

Ridley: My contention in equity if not in law would be that there is an implied obligation upon the company, if not to raise the capital for the general undertaking, at any rate to do nothing to incapacitate themselves from raising it. So long as they take no steps to abandon the general undertaking, our rights may be latent, but they still exist. If the position in which they now ask to be placed had been forced upon the company by the Board of Trade, or even by their shareholders, it would have been different; but here they are themselves asking Parliament to disable them from doing that which they implicitly covenanted with us to do, namely, at some time or other, to raise capital from the general undertaking, and we say that they should not be allowed to do so unless our rights, whatever they may be, are preserved to us. The company have received the benefit of our money, and in equity we should be entitled to a decree for specific performance, or an injunction to restrain them from doing any act which would incapacitate them from paying us. If, however, they obtain powers to abandon their undertaking and so get rid of their liability to us, they may come next year for new powers to resume the undertaking, freed from this liability.

Burt: In previous cases judgment creditors have been refused a hearing.

Mr. RICKARDS: The claim of a creditor does not usually arise, as in this case, under a stipulation for payment out of a particular fund; his claim is against the company generally, and the reason why he has not a *locus standi* is because he has a remedy at law.

Ridley: Yes; and here the company deprive us of our existing remedy without giving us any other. We ask, therefore, to be allowed in Committee to propose a clause for our protection, and preserve such rights as we have.

Burt (in reply): A document manifestly illegal—for instance, a fraudulent bill of exchange—can give no *locus standi*. Here the agreement is on the face of it illegal. According to the decision in *Chambers v. the Manchester and Milford Railway Company* (33 L. J., Q. B., 268) a company has no power to borrow till it has subscribed a certain proportion of its share capital. This was a borrowing of money before

any share capital was raised, and the document is, therefore, utterly invalid.

The CHAIRMAN: You want us to take upon ourselves the functions of a court of law and decide whether this was an illegal borrowing?

Burt: It is stated in our preamble, and is not traversed in the petition, that the company has raised no part of its share capital for the general undertaking, and inasmuch as no meeting was held and no authority given for the borrowing of money, the petitioners can found only upon an invalid document and have no remedy whatever. They have also carefully contracted themselves out of a right to be paid from any other than share capital for the general undertaking, and there never can be any such share capital.

The CHAIRMAN: Do you say that this contract deprives them of the ordinary rights of a creditor?

Burt: Certainly. They have contracted themselves out of such rights by agreeing that they shall be paid out of capital to be raised for a particular undertaking; and our statutory powers for taking the land having expired, we cannot raise the capital.

Mr. RICKARDS: You come now for power to disable yourselves from raising it.

Burt: We only come to anticipate by one year what Parliament has already decided by the existing Act, namely, that within a certain time the power to make the railway shall cease. The object of the petitioners really is to obtain payment from some assets other than those contemplated by the agreement. This is only a vexatious opposition to the settlement of our affairs, because there is no fund out of which the petitioners can be paid in any circumstances; they have no rights and no remedies.

Mr. RICKARDS: You are trying to make it impossible that any fund out of which they might be paid should ever exist.

Burt: It is impossible now.

The CHAIRMAN: You are anticipating by a year the impossibility that may hereafter exist.

Burt: They now have no remedy at all. I challenge them to say what remedy they have.

The CHAIRMAN: The fact of their having no remedy is rather against you. If a man says he has no other remedy than by coming to Parliament, we should not desire to stretch a point so as to shut him out.

Burt: If he has not a remedy now, surely you will not give him one. Even if this document were valid, the petitioner would have no right or remedy under it, and it being, as we say, wholly invalid, we ought not to be put to the expense of having our bill opposed by these petitioners.

The CHAIRMAN (after deliberation): The Court does not intend to go into the question of the legality of the agreement. That must be settled in some other Court, but as the rights of creditors are not reserved by the bill, and as Messrs. Grant may be creditors on a fund which this bill would render it impossible to raise, their *locus standi* is Allowed.

Burt: Limited, I presume, to that question?

Mr. RICKARDS: The object of the bill is to abandon a part of the undertaking. There will be a general *locus standi* against the bill.

Agents for the Bill, *Bircham & Co.*

Agent for Petitioners, *Ridley.*

PLYMOUTH DOCK (DEVONPORT) WATER BILL.

Petition of CORPORATION OF DEVONPORT.

3rd May, 1876.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir HARCOURT JOHNSTONE, M.P.; and Mr. RICKARDS.)

Water Company—Under Act of 1793—Alleged Inconsistency of, with Modern Legislation—Capital and Dividends Unlimited—Water Rates, no Restrictions on—Varying Charges in same limits of Supply—Exemption of Undertaking from Parliamentary or Parochial Rates—Municipal Corporation seeking to Purchase Waterworks—Complaining of Past Legislation—Test of Claim to Locus Standi—Increase of Capital and Rates—Absence of Constant Supply—Works' Clause, no Sufficient Description in—Waterworks' Clauses Acts—Practice—Cases Cited—Right of Reply upon—Cases of the Devonport and Stonehouse Cemetery Bill, 1875, and South Staffordshire Water Bill, 1875, considered.

In 1793 an Act passed, constituting a company for supplying water to the parish of Stoke Damerel, which included the town of Plymouth Dock (now Devonport). The Act contained no limitation upon the capital or dividends of the company, and put them under no obligation to supply that part of the parish situated outside the line of fortifications. The rates charged within the line were to be increased in the event of any increase in the rates charged by another company in the neighbouring town of Plymouth, but there was no provision for a corresponding reduction, and, in the districts outside the line (now become very populous), the rates were to be settled by agreement between the company and the inhabitants. Under their Act the Company were also exempt from supervision by Commissioners of Sewers, as well as from payment of any Parliamentary or parochial rates or assessments. They now promoted a bill which kept alive the Act of 1793, fixed the original capital at £90,000, sought an increase of capital for the construction of filter-beds, and for the general purposes of the undertaking, and provided for an alteration in the charges to private consumers. The corporation of Devonport petitioned, and their

locus standi against the new rating clause was admitted. They, however, sought to be heard generally against the bill, on the ground that they were injuriously affected, and they alleged numerous instances of anomalies in the Act of 1793, urging that it ought to be repealed, and that the company (who were for the most part strangers to the town) should sell their undertaking to them on behalf of the town. They alleged, further, that the effect of the bill would be to secure to the company dividends of 10 per cent. on a sum largely in excess of that really expended upon the undertaking; that the bill expressly relieved the company from any obligation to supply part of the parish; and that in the absence of proper works' clauses, no additional capital was shown to be necessary. The promoters objected that the petitioners were really complaining of past legislation; that a mere proposal to increase capital gave no right of opposing a bill, and that the claim to appear against the other provisions of the bill (except the rating clause) was negatived by the fact that the inhabitants would be benefited, not injured, by those provisions, and, if the bill were rejected, would still be exposed to the anomalies of the old Act, whereas the company now for the first time proposed to subject themselves to the restrictions of the general law:

Held, distinguishing this from other cases in which the chief ground of complaint was past legislation, that the petitioners here were entitled to a general *locus standi* against the bill.

(*Per Cur.*) "It is the practice of the Court to allow counsel to make observations in reply upon cases cited."

The *locus standi* of the corporation of Devonport was objected to, because (1) the petition shows that their primary object is "to compel the company to sell their undertaking to the petitioners," and the petitioners can have no *locus standi* for the purpose of inserting such provisions, which are foreign to the subject-matter of the bill; (2) the main objections of the petitioners relate not to the provisions of the bill, but to the company's powers under their existing Act, and they are not entitled to a *locus standi* for the purpose of complaining of past legislation; (3) the bill will not, as alleged, enable the company to charge for the supply of water for domestic purposes more than they are now entitled to charge; (4) the bill

does not prejudicially affect the water supply within the district, but such supply will, on the contrary, be greatly improved under the bill; (5) it is not the fact that the company seek power to pay a dividend at the rate of 10 per cent. per annum on their existing capital of £90,000, nor, if they did, would the petitioners have any right to be heard against such a proposal, as the company's existing Act imposes no restriction whatever upon the amount of their capital, or the rate of dividend payable thereon; (6) no property, rights or interests of the petitioners will be prejudicially affected, no new works will be constructed within their district, nor will the inhabitants thereof be injuriously affected by the bill; (7) they cannot be heard consistently with practice.

Saunders (for petitioners): We are the urban sanitary authority for Devonport (the old name of which was Plymouth dock), and the whole parish of Stoke Damerel. The supply of water to this district is regulated by an Act passed as long since as 1793 (33 George III., cap. 85), which recites that it is of great consequence that the inhabitants and the shipping should have "a constant supply of fresh water." The company then incorporated have acquired a practical monopoly of the water supply; but the supply has never been constant, and in many other respects has been very defective, while the charges authorised by the Act of 1793 are most irregular. The same rates were to be charged to inhabitants of Plymouth dock as those paid in Plymouth, which was supplied by a separate company, increasing in the same proportion if the charges there were increased; but the Act did not provide for a corresponding reduction in the Devonport charges in the event of a reduction at Plymouth. The result is that though the Plymouth charges have been reduced, and are now subject to a graduated scale under the Plymouth Corporation Water and Markets Act, 1867, no such reduction has been made by this company. So much for Plymouth dock, or Devonport, which is situated within the lines of fortification. As regards the remainder of the parish of Stoke Damerel, situate without the lines, the inhabitants, under the Act of 1793, are only entitled to lay the water into their own houses at their own expense, paying such rates as shall be agreed between them and the company; and as to this rapidly-increasing population, the charges which the company may demand are practically unlimited. They vary considerably from the rates charged to the population within the line of fortifications, and there are long-standing complaints of insufficiency of supply. The petitioners say that there is little prospect of any satisfactory remedy for this state of affairs so long as the water supply remains in the hands of a company whose shareholders have little personal interest in the district, holding their meetings in London; and from time to time negotiations have been opened with the company for the purchase of their undertaking. These offers, however, have been persistently rejected. The town council of Devonport, therefore, resolved to oppose this bill with a view to protective clauses or the purchase of the water-works by agreement; and this opposition has

been authorised by the ratepayers under the Borough Funds' Act. The bill states that the company have raised and expended upwards of £90,000 upon which they seek to pay a dividend at the rate of £10 per cent. per annum. But we say that the original capital of the company, in respect of which alone a dividend at that rate should be allowed, is a much smaller sum. We, therefore, ask for strict inquiry into this matter, especially to ascertain how much of the £90,000 has been expended out of profits. The company now seek to raise further capital to improve and extend the supply; but the clauses do not provide for the construction of any definite works, or make it obligatory on the company to expend any part of the additional capital for this purpose. We seek to be heard against various other provisions of the bill, one of which authorises a charge, for water for domestic use, of £6 per cent. per annum upon the annual rack rent of the house to be supplied. With respect to most of the houses, this rate would be much greater than the company can charge at present.

Littler, Q.C. (for the bill): We concede your *locus standi* on the question of price.

Saunders: We seek to be heard against the whole bill. The company keep alive the Act of 1793, and we say that it ought to be entirely repealed, because many of its provisions are inconsistent with modern legislation; among others, those which exempt the company's works from supervision by the Commissioners of Sewers and exempt the company itself from any Parliamentary or parochial rates or assessments whatsoever. I admit that if we only asked for clauses requiring the company to sell their undertaking, we might not be entitled to a hearing upon that ground alone. I admit also that we object to other provisions outside the bill. But these are not our main objections. We take issue, for example, as to the amount of original capital set forth in the bill, and we are entitled to contend before the Committee that the company must not treat capitalised profits as ordinary capital and pay 10 per cent. thereon. Then we shall argue that there is no specific works' clause in the bill, and that there is no necessity for raising additional capital.

Littler: Clause 22 defines how the money is to be spent, and says it is to be applied in the construction of filter-beds and other works.

The CHAIRMAN: But the clause also adds, "and for the general purposes of the undertaking."

Saunders: Yes. Another point upon which we seek to be heard is that a constant supply should be given in every part of the town, because, though the bill incorporates the Water-works' Clauses Acts, it expressly provides that water need not be supplied in any case at a level above that at which it can be supplied by gravitation from the existing works; and no works for affording a supply at a higher level are contemplated.

Littler (in reply): With the single exception of rates, the bill contains no provision which entitles the corporation to oppose it as representing the inhabitants of Devonport. They have no right to be heard with regard to existing capital. This is not the case of a company with

a limited capital, for, according to the constitution of this company, the amount which the shareholders may be called on to subscribe is unlimited, nor is there any limitation as to the amount of profit they may make. All that the bill does as regards existing capital is to impose fresh restrictions, because we place ourselves under the Waterworks' Clauses Acts; and under the bill we obtain no new privilege, unless it be that of raising fresh capital for the purpose of making filter-beds. Increase of capital of itself gives no *locus standi*. We have only put the existing capital at £90,000, because we thought it fair to fix in the bill the limit upon which we should be entitled to charge a 10 per cent. dividend. If the corporation succeeded in throwing out this bill we should still be able to charge unlimited rates, and should be free from the obligation of the general Act. By this bill, which incorporates the general Acts, the consumers will obtain certain remedies, and our dividend upon the new capital will be restricted to 7 per cent. The case of the *Devonport and Stonehouse Cemetery Bill* (1 Clifford & Rickards 181) is in point.

Mr. RICKARDS: The object of that bill was simply to enable the cemetery company to enlarge the cemetery and apply their own money to the enlargement. It was little more than an estate bill.

Littler: The Court there put a test question:—"Would the inhabitants of Plymouth, whom the corporation represents, be worse off if this bill were to pass than they are now?" The same question may be put here. Except as to rates, upon which the *locus standi* of the corporation is conceded, Devonport will be benefited, not injured, by the bill. Another case on all-fours with this is *South Staffordshire Water Bill* (1 Clifford & Rickards 187).

Mr. RICKARDS: An important distinction exists between the two cases. There it was objected that the petitioners did not allege that the powers sought by the bill, including the proposed extension of limits, would prejudicially affect the water supply within the borough. Here that objection could not be taken, because the petitioners allege that the preamble of the bill is incapable of proof, and that its provisions will be injurious to the inhabitants of the district they represent.

Littler: But there is no provision in the bill which justifies such an allegation. The main part of the petition complains of past legislation, and asks that provisions should be added to the bill—such as one for the sale of the undertaking to the corporation.

Saunders claimed the right to reply upon the cited cases.

Littler objected.

Mr. RICKARDS: It is the practice of the Court to allow counsel to make observations in reply upon cases cited.

Saunders was accordingly heard to distinguish the cases.

The CHAIRMAN (after deliberation): In this case we must allow a general *locus standi*. We think we should be unduly extending the principle of the *South Staffordshire* case if we confined the *locus standi* to the rating clauses only.

Mr. RICKARDS: From the report of the *South Staffordshire* case it does not appear that there were any provisions in the bill specially applicable to Dudley. We therefore think we should be extending that decision very much if we refused a *locus standi* in this case.

Locus standi Allowed.

Agents for Bill, Toogood & Ball.

Agents for Petitioners, Sherwood & Co.

SLAITHWAITE GAS BILL.

Petition of (1) Messrs. MALLINSON AND SONS.

23rd March, 1876.—(Before Sir JOHN ST. AUBYN, M.P., in the Chair; Mr. PEMBERTON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER).

Gas Company—Extension of Limits—Competition—Partial Supply from Private Works within Extended Area—Supplemental Supply by Promoting Company in bulk to Petitioner—Gas Retailed by him—Gas Pipes, Laying of, in Roads—Opposed by Owner of Land abutting on Road.

Messrs. Mallinson, a firm of manufacturers at Linthwaite, in the West Riding, had, since 1856, supplied their own mills with gas. They also, without statutory powers, supplied about 100 private houses in the neighbourhood, receiving permission from the local board to break up roads and lay down mains. As their gas works were not large enough to furnish the whole of the gas required for this service, they supplemented their own supply by gas taken in bulk from the Slaithwaite gas company, whose mains ran close by. This company now promoted a bill to include within their limits the township of Linthwaite. Messrs. Mallinson opposed the bill on the ground of competition, and interference with their pipes, and also as owners of land abutting on roads under which the company's pipes would be laid. It was objected that the roads in question were public roads, vested in the local board, who kept them in repair, and that owners of adjoining land had no such interest in them as would support a landowner's *locus standi*. It was further objected that the petitioners were private persons possessing no statutory powers, having no defined district of supply, and deriving their main supply from the pro-

motors, who might, at any moment, discontinue it. Evidence, however, was given to show (*inter alia*) that the petitioners could now manufacture sufficient gas to be independent of the promoters :

Held, that the petitioners had a right to be heard against the bill on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) their land is not taken or interfered with ; (2) their present position as to gas supply will not be altered by the bill, which will not injuriously affect them ; (3 and 4) they are private individuals without statutory powers, and do not supply any defined district, merely manufacturing gas for their own mills and premises, and supplying some few persons besides in the immediate neighbourhood of their mills by means of gas obtained from the works of the promoters, who may at any moment discontinue the supply. Except by permission, which may at any time be revoked, the petitioners cannot lay down pipes or continue to supply gas outside their own premises, and their business is not of such a nature as to give them a right to be heard on the ground of competition ; (5) the bill does not empower the promoters to interfere with private streets and roads, and the petitioners are not entitled to be heard against the bill in respect of injury to, or interference with, public highways ; or the mains, pipes, &c., which are now or may hereafter be laid under the same ; (6 and 7) they allege no grievance entitling them to be heard according to practice.

J. Coates (Parliamentary Agent, for petitioners) : We supply from our private gasworks a portion of the township of Linthwaite, which the promoters now seek to include within their limits. These works are situate in Linthwaite, close to the turnpike road, and were constructed in 1856 for the supply of our own mills, but by degrees the mains were extended outside our own premises to supply the cottages of our workmen, and in 1870, as the outside demand increased, we obtained a supply of gas in bulk from the promoters, who had run a main along the road in front of our works. Our pipes have now been extended over a considerable portion of the district, we having obtained the consent of the local board of Linthwaite to break up the roads, and we are now supplying the local authority itself and lighting the streets in their district. Since last summer, changes have been made in our works, and we are now entirely independent of any supply from the promoters. As an owner of private gasworks supplying a certain district with the consent of the local authority, after incurring a considerable expenditure, Messrs. Mallinson are entitled, according to several reported cases, to oppose an attempt by a gas company to include this district within their limits of supply. We also claim a hearing as owners of the soil of some of the streets and roads in which the mains of the promoters will be laid under the bill, *i.e.*, our land abuts upon these streets and roads, and we therefore have a right to the solum half-way across.

Granville Somerset, Q.C. (for bill) : It is a public street, under the supervision of the local board, of which this gentleman is one of the leading members.

Coates : This street is in a rural district, and differs, therefore, from a street in the centre of a town.

[Mr. Mallinson was here examined, and stated (*inter alia*) that he owned land which at certain points was situated on both sides of roads in which the company's mains would be laid. These roads were vested in the local board, and repaired by them. Witness was cross-examined with a view to show that the gas he supplied to outside customers was drawn from the promoters' works, and that he only ceased to take gas from them after the notice of their bill was issued. In re-examination he stated that his firm now supplied 120 or 130 buildings, including several grocers' and drapers' shops and other large consumers, along with 22 public lamps. His gasholder had been considerably enlarged.]

Somerset (in reply) : A single individual cannot be heard against a gas company save under exceptional circumstances.

Mr. RICKARDS : The petitioners are here as competing gas dealers.

Somerset : We deny that they ever supplied any consumers outside their own mill, except by means of gas obtained from us ; this was the effect of evidence given by the witness himself before a Committee last year. It was only in November, after our notices were out, that he got leave from the local board to light some public lamps ; we have authority to light a large majority of them. And in December, no doubt also owing to our notice, he ceased to take gas from us. As to the landowner's claim, the Highways Act, 1875, vests the highways in the local board.

Coates : But only for certain purposes. The local board cannot do what they like with the roads.

The CHAIRMAN (after deliberation) : The *locus standi* of Messrs. Mallinson is *Allowed*, on the ground of competition.

Locus standi Allowed.

Potition (2) of CORPORATION of HUDDERSFIELD.

Gas Company—Extension of Limits—Municipal Corporation Supplying part of Township—Gas Company seeking to Supply Township—Municipal Boundary—Probable Extension of—How far ground of Locus Standi.

The corporation of Huddersfield had statutory powers to supply water within the whole of the neighbouring township of Linthwaite, and gas within a portion of the township, but were not actually supplying either. A

bill was now promoted by a private gas company for supplying with gas that portion of Linthwaite within the municipal limits of supply, as well as the portion not included under any statutory powers. The corporation opposed the bill, and declined to accept a limited *locus* against the bill so far as it affected their statutory rights of gas supply in Linthwaite, alleging that other parts of the township would probably, before long, be included within the municipality, that it was expedient that the supply of water and gas in the township should be in the same hands, and asking, therefore, to be allowed to oppose any extension of the company's limits in Linthwaite :

Held, that the corporation of Huddersfield had no interest in the bill entitling them to be heard against any other portion of it than that which affected their statutory rights of gas supply in Linthwaite, and *locus standi* limited accordingly.

The *locus standi* of the petitioners was objected to, because (1 and 2) the bill interfered with no property of theirs, and in no way alters their rights or privileges, or injuriously affects their present position ; (3) it is not the fact that they supply with gas the township of Linthwaite, except that part mentioned in the petition ; (4 and 5) the promoters are not bound by the agreement mentioned in the petition, and as the limits of the bill include no portion of the borough of Huddersfield, the petitioners are not entitled to be heard, except as to so much of the township of Linthwaite as they are authorised to supply under the Huddersfield Gas Act, 1861 ; (7 and 8) the petition discloses no grounds entitling them to a hearing.

J. Coates (Parliamentary Agent, for corporation of Huddersfield) : In 1861 we took over the undertaking of the Huddersfield Gas company, and have statutory powers to supply a portion of Linthwaite. We are not satisfied with the concession of a *locus* limited to the portion of the bill which seeks powers over the same district. Linthwaite is now very little built on, one reason being the difficulty of getting water there. The corporation, however, are now carrying a water main through the township, and are also gradually extending their gas supply in the same direction. When the supply of water is developed, the township will become more populous, and the corporation look forward to an extension of the borough limits at no distant time, so as to include a portion of Linthwaite. It is of great importance, as they allege, that they should have in their hands the supply of gas as well as of water within the whole of this district, as well as their own borough.

Granville Somerset, Q.C. (for bill) : The cor-

poration of Huddersfield have a right to protect their own territory, but have no right whatever to be heard in respect of any powers sought by us outside their limits. [*He was then stopped.*]

The CHAIRMAN : The *locus standi* of the Huddersfield Corporation is *Disallowed*, except so far as regards their statutory limits for gas supply.

Agents for both Petitioners, Dyson & Co.

Agents for Bill, Durnford & Co.

SOUTH EASTERN RAILWAY BILL.

Petition of D. M. BRITTEN and R. A. GIBSON.

20th March, 1876.—(Before Mr. PEMBERTON, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Railway—Widening of Line—Bill to Authorise—Obstruction to Light and Air—Proposed under Existing Act—Injunction Against—Effect of—Lis Pendens—Premises Injuriouslly Affected, no Land being Taken—Case of the Skinners' Company—Money Compensation for Injury, Alleged Insufficiency of—Special Manufacturing Requirements—Lands' Clauses Acts—The 300 Yards' Limit—S. O. as to Cemeteries and Gas-works—Suggested Application of, to Bills Involving Interference with Light and Air—Mill-owners, Analogy in Case of.

The petitioners were glass merchants and cutters in Southwark, their place of business being situate near the Charing Cross line of the South Eastern railway company. In 1875 the company proposed to widen this line, under the authority of an existing Act. The petitioners, however, obtained an injunction against the company on the ground that the Act in question did not authorise such widening, which, if carried out, would obstruct their light and air and render it impossible for the petitioners to carry on their business. A bill was now promoted by the company, giving the requisite powers. It was opposed by the petitioners, because (1) it would over-ride the injunction, thereby depriving them of the benefit of the decision given by the Court of Chancery in their favour; and (2) because, though no land of theirs was taken, the compensation which might be obtained under the Lands' Clauses Act would, under the circumstances, be illusory, as their business would be irretrievably injured by the proposed works. In reply, the authority of the *Skinners' Company's* case was

cited as conclusive against any claim to a *locus standi* founded on a mere injurious affecting, the proper remedy of the petitioners being that provided in such cases under the general law :

Held (1), that the injunction did not preclude the company from coming to Parliament for new powers, such injunction having merely decided that the company could not proceed under any existing statutory authority; and (2) that, though the case was one of difficulty, the *locus standi* of the petitioners must be allowed, their case being sufficiently exceptional to justify a departure from the general principle of previous decisions—namely, that landowners can only be heard when their land is actually taken or interfered with.*

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be taken or used; (2) the only ground on which they claim to be heard is that their property will or may be injuriously affected by the proposed widening of the promoters' Charing Cross line, but the petitioners are not on that account entitled to be heard against the bill, the general Acts incorporated therewith being amply sufficient to protect them; (3) they have no interest in the objects and provisions of the bill entitling them to be heard.

Granville Somerset, Q.C. (for petitioners) : The effect of the proposed widening of the promoters' line will be to bring a dead wall within an average distance of 2½ feet of our windows and to a height of 15 feet above our first floor. We have a lease for 69 years from 1822, if any one of three persons therein named, and still living, should so long survive. Our windows, which would be thus blocked by the dead wall, are ancient lights, and are the only means by which we can receive light and air. At present the company's line runs nearly parallel with our windows at a distance of about 23 feet from them. The proposed viaduct would be 25 feet high, and would almost wholly exclude our light and air, rendering the rooms utterly useless for purposes of business, and, indeed, for any purpose requiring natural light. In glass-cutting and sorting, a good northern light is most important; and from the angle at which it now comes into the room used for this purpose, the light is peculiarly well adapted for examining quality and discovering defects. Another room is used for sorting and drying glass, and here a strong current of air is essential. But if this viaduct is built we shall get neither the necessary light nor air, and the rooms will become useless. The company endeavoured to do under an Act of 1872 what they are proposing to do

under this bill. Thereupon we went to the Court of Chancery to restrain them. Our bill was filed in April, 1875. It was not till the following August that the company filed their answer, urging that the General Acts would give us compensation. In March, 1876, Vice-Chancellor Hall gave an injunction against the company with costs. On the part of the company the Vice-Chancellor was asked to say that when the bill which they were then promoting in Parliament was passed, the injunction should be dissolved, but he said, "If the Act gives you power, of course the injunction will be dissolved;" and that is what the company are now virtually asking—that you should dissolve the injunction without hearing us.

Mr. RICKARDS : The situation seems to be this : The Court of Chancery has decided that under the South Eastern Act of 1872 the company have no authority to widen their line. They accept that position, and ask Parliament to pass another Act which will give them the necessary power. They do not seek to dissolve the injunction, but to obtain from Parliament the authority to do that which the Court has said is at present illegal.

Worsley (for bill) : The mere fact that we claimed the right to build the viaduct under the Act of 1872, does not give the petitioners a *locus standi*. The bill must be treated as one conferring new powers upon the company; and as none of the petitioners' land is taken, the case is concluded by the *South Eastern Railway Bill* (*Petition of the Skinner's Company*), *Smeth.* 101.

Mr. RICKARDS : The point is this : A landowner is entitled to be heard if his property is actually taken; but if it is not taken, and is merely injuriously affected, the Lands' Clauses Act provides a remedy at law in certain cases.

Somerset : It provides compensation, but that is a very different thing from remedy. Our business will be simply ruined by this structure. The company will have five years in which to make the works, or they may not make them during that period, but at the end of the five years may come for an extension of time bill, against which, according to your decisions, we should not be allowed a *locus standi*. All this time we should be in suspense, and if the viaduct is made, compensation will be of no use to us, for no other situation will suit us as well.

The CHAIRMAN : The S. O. saving the rights of persons residing within 300 yards of cemeteries and gas works, has omitted cases of interference with light and air?

Somerset : Yes; it has provided only for nuisances in the way of smells.

The CHAIRMAN : I think the S. O. might reasonably have included interference with light and air.

Somerset : We say we should not get adequate compensation under the General Acts, and the Vice-Chancellor has held that we should not. But even if we could get the fullest compensation under the General Acts, we ought to be heard against this bill. The Court has not held that injuriously affecting under no circumstances gives a *locus standi*. In 1865, when the case of *The Skinners' Company* occurred,

* Cf. *Bilton-le-Sands, &c., Reclamation Bill*, ante, 203.

the reports were very brief, and it is difficult to ground any argument upon that case unless one had fuller details.* If, however, the decision is as quoted, I submit it is a wrong decision. In cases where water will be taken from a stream, mill-owners are heard, though their land is not touched, on the ground that their mills are affected, and that they are thereby prevented from gaining their livelihood. Why should not they be told, "You can get compensation under the General Acts," in the same way as other persons who are injuriously affected? But though the mill may be 20 miles from the point where water is taken, you allow any owner to be heard, because the bill may prevent him from working his mill. Substitute air and light for water, and what is the difference in principle? There is abstraction of water in the one case, and abstraction of light and air in the other. In the *Birkenhead and Chester, &c.*, case (1 Clifford & Rickards 4) there was not even abstraction of water. In the *Metropolitan and St. John's Wood Railway Bill* (ib. 47), the petitioners were only injuriously affected and were not touched by the line, but they were allowed a *locus standi*; and there Mr. Adair said:—"The governors of a hospital were allowed a *locus standi* against one of the Metropolitan deviations on the ground that it would injuriously affect certain wards of the hospital." The *Great Western Railway Bill* (1 Clifford & Rickards 25), and the *Fareham and Netley Bill* (Smeth. 120) are also in point. There is also a dictum of Mr. Rickards' in the *Dorking Gas Bill* (2 Clifford & Stephens 197).

Mr. RICKARDS: "Injuriously affecting" there means "injuriously affecting" under the S. O. There is one other case (1 Clifford & Stephens 40, *text*), where a *locus standi* was allowed to proprietors of powder-mills on the ground that the construction of a railway close by would endanger the carrying out of their business.

Worsley (in reply): As to the *lis pendens*, we are not interfering with it.

The CHAIRMAN: We need not trouble you upon that point.

Worsley: According to practice, mere "injuriously affecting" will not give a *locus standi* even in some cases where compensation cannot be claimed under the General Acts (as for blocking out a man's view); still less can there be a *locus standi* where compensation may be claimed. As to the powder-mill case, the reason for giving a *locus standi* probably was that the owners would not have received compensation under the Lands' Clauses Act, or that the buildings could not well be moved anywhere else. Besides the *Skinner's Company* case, that of the *Loughborough Park Chapel* (1 Clifford & Stephens 45) is in my favour. In the *Metropolitan and St. John's Wood Railway* case, the petitioners rested their claim on the decision in *Brand v. the Hammersmith Railway Company*—that a person is not entitled to compensation for vibration after a railway has been made. Here the case is quite different, for the petition-

ers will be compensated under the Lands' Clauses Consolidation Act, sec. 68. (Rickards' *Metropolitan Railway*, 2 Law Reports [House of Lords], 198.)

Mr. RICKARDS: The petitioners here say that theirs is an exceptional case; that it is a question of carrying on the business or giving up the business; and, without denying that they may obtain compensation, they say that compensation is not applicable to such a case.

Worsley: Surely it cannot much matter whether the business is carried on in the particular premises, or in some other locality. We should have to compensate them for all the injury they could prove. It is simply a question of money; and there have been negotiations as to the amount to be paid.

Somerset: Those negotiations were to be without prejudice. It is true that we do not want to fight a powerful company, and wish to do all we can to save our trade and prevent litigation. If we get a *locus standi* we shall throw out the bill if we can.

Worsley: As to the *Birkenhead and Chester* case, the right of mill-owners to appear depends on a S. O.

The CHAIRMAN: That case was not decided on the S. O.

Worsley: The company were obstructing the tide-way, and substantially, therefore, the case came within the S. O. In the *Great Western Railway* case (1 Clifford and Rickards 25), Mr. Knowles was admitted as a landowner, because a footpath belonging to him was being taken away.

The CHAIRMAN (after deliberation): In this case we have had considerable difficulty, but looking at the exceptional nature of the case we think that the petitioners have made out their claim, and that the case should be excepted from the ordinary rule which has governed previous decisions.

Locus standi Allowed.

Agent for Bill, Stevens.

Agent for Petitioners, Bell.

STOCKTON AND MIDDLESBROUGH CORPORATIONS' WATER BILL.

Petition of (1) the NORMANBY LOCAL BOARD.

20th March, 1876.—(Before Mr. PEMBERTON, M.P., in the chair; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Water Supply—Compulsory Purchase of Company's Undertaking by Corporations—Construction of New Works—Rival Bills of Company and Corporations—Local Board District to be Supplied—Preference of Local Board for Company's Supply—Higher Rates by Corporations Apprehended—Cost of New Works, Under Estimated—Public Health Act, 1875.

* But see the report of this case in 12 L.T.R., N.S., 97.

The district of Stockton and Middlesbrough was supplied with water by a company whose undertaking the corporations of Stockton and Middlesbrough were jointly applying to Parliament for powers to buy compulsorily, and in connection therewith to construct additional works, and supply the township of Normanby among other places. The bill was opposed by the water company, whose *locus standi* was undisputed, the company, moreover, being themselves before Parliament with proposals, at the instance of the local board of Normanby, for supplying that township and for other objects. The bill of the municipalities was also opposed by the Normanby local board, who stated that they were satisfied with the proposed supply of the water company, and alleged that as the two corporations were proposing extensive works of their own, the rates charged by them would be higher than those charged by the water company. On the part of the municipalities it was urged that, no higher rates being proposed by the bill, these allegations conveyed no more than a preference for the water company's bill as against the joint bill of the corporations, and that the petitioners might express their preference by giving evidence in favour of the company's bill before the Committee without having a *locus standi* in addition to that of the company :

Held, however, that as the petitioners stated that they apprehended the imposition under the bill of higher rates than would otherwise be charged for water within their district, they had a right, as the urban sanitary authority, to a separate *locus standi* against the bill.

The *locus standi* of the Normanby local board was objected to, because (1) no lands, &c., of theirs will be taken or used; (2) no rights or interests of theirs are prejudicially affected; (3) they do not allege any injury entitling them to be heard; (4) the Stockton and Middlesbrough water company will be heard upon their petition against the bill, and the allegations of the petition indicating a preference for the water to be supplied by the promoters, disclose no ground entitling the petitioners to be heard according to practice; (5) they are not, and do not, allege themselves to be the municipal or other authority having the local management of any town or district injuriously affected by the bill; (6) they have no interest entitling

them to appear consistently with ordinary practice.

Pope, Q.C. (for petitioners): A local authority under the Public Health Act, 1875. is now the water authority of the district. This, therefore, is the petition of a body entrusted with the duty of providing a supply of water for its district, either by contract with an existing company, or by constructing works of its own; and it seeks to be heard against a bill promoted by two corporations of neighbouring towns, who propose to absorb the district of the water company. There being a change of parties with whom we should have to treat for a supply of water, we should be entitled to a hearing upon that ground. Though a portion of our district is supplied by the water company, Normanby itself is not now supplied by them, and is dependent on wells. The local government board have, therefore, pressed upon us the duty of securing an efficient supply, with a view to improve the sanitary condition and health of the district, and the water company are now promoting a bill which will enable them to afford to Normanby a good and wholesome supply for domestic and all other purposes. We say, therefore, that the bill of the corporations is unnecessary and uncalled for; that the enormous expenditure which will be thrown upon them by their contemplated works will render necessary much higher rates than those charged by the company; and that the promoters' estimate of this expenditure is wholly insufficient. Besides these allegations, we object to "divers provisions in the bill" which will "injuriously affect our property, rights, and interests."

Mr. RICKARDS: If this bill passed, the company would be bought up by the corporations?

Pope: Yes, provided the corporations exercised the powers which the bill would give them; and the question is whether, the company being bought up for Stockton and Middlesbrough purposes, we ought not to be heard to protect our rights.

The CHAIRMAN: The company themselves oppose being bought up?

Pope: Yes; but it cannot be pretended that the company represent the public interests of Normanby.

Bidder, Q.C. (for bill): It does not follow because, under the Public Health Act of 1875, the local board of Normanby have been clothed with some additional authority for purposes of water supply, that they therefore have a *locus standi* against the bill. That question depends upon the allegations in their petition. All they say, in substance, is that our bill is unnecessary, because the water company are ready to meet their requirements. They do not really object to the corporations' bill, but say they would rather be supplied by the company than by the corporations. Now, local boards have been allowed a hearing where they have said that there is no provision for constant supply, that the rates fixed in the bill are too high, and so on. But nothing of the kind is alleged here.

Mr. RICKARDS: The petitioners say that the increased expenditure involved in constructing the works must lead to the charge of higher rates by the corporations than by the company.

Bidder: But they do not say that the corporations are taking power to charge higher rates. The corporations will take over the company's undertaking with all its powers and duties. This case is on all-fours with the *Cleator and Workington Junction Railway Bill* (*Ante*, 212), where traders who expressed a preference for one of two rival schemes were refused a *locus standi* on the ground that the question as to the merits of those schemes would be fought before the Committee to whom they were referred, though the same allegation as to the prospect of higher rates was made there.

The CHAIRMAN (after deliberation): The *locus standi* of the local board for the district of Normanby is *Allowed*.

Petition (2) of RIPARIAN OWNERS on the RIVER TEES and OTHERS.

Riparian Owners—Fishing, Rights of—Conservators of Fishery, representing Riparian Owners—Diversion of Streams—Injury to River, for Fish-Breeding Purposes—Land, Interference with—And with Riparian Rights—Distinction Between—Water of Tributaries Intercepted and Impounded—Flow of Water in River, Injurious Affected by—The 20 Miles' Limit—Lands' Clauses Act, Remedy Under—Evidence in Support of Petition—Traverse of Allegations in.

For the purpose of improving the water supply of Stockton and Middlesbrough, which the corporations of those towns proposed to take into their own hands, they sought powers to carry an embankment across two tributaries of the Tees, the Lune and Balder, and to intercept and appropriate the water of those streams. The bill was opposed by petitioners, who alleged that some of them were riparian owners on the Tees, and objected to the proposed diversion of water as injuriously affecting their rights as owners of property and of fisheries in the river, the petition dwelling almost exclusively upon the injury apprehended to their rights of fishing. But the allegation that they possessed these rights was traversed, and no evidence upon this point was tendered. It also appeared in evidence that the petitioners resided, or that their interests lay, over 20 miles from the streams in question. For the promoters it was contended that, even assuming the petitioners to possess any rights of fishing, these were placed by statute under the protection of a body of conservators who did not petition; that as riparian owners the petitioners were beyond the limit at which their interests could suffer substantial injury

under the bill; and that, if they were injuriously affected, they had a remedy under the general law:

Held, that the petitioners were not entitled to a *locus standi*.

The petition was signed by 31 "undersigned riparian owners, salmon fishery conservators, salmon licence-holders, and others," who alleged that many of them were "respectively owners, lessees, or occupiers of lands upon the banks of the River Tees, and as such are owners of the right of fishing;" that they objected to the powers proposed in the bill of taking, impounding, and diverting the water of the Lune and Balder, which would most prejudicially affect their rights and interests as owners of property and of fisheries, and also as members of the board of conservancy of the River Tees salmon fisheries; that great quantities of salmon and other fish resort to the Lune and Balder for breeding purposes; that the proposed embankments would effectually bar the passage of breeding fish to the spawning-beds in the higher reaches of those rivers, and would thus seriously decrease the supply of salmon in the Tees and its tributaries; and that the stoppage of the natural flow of water down the Lune and Balder would also be injurious to breeding fish below the points of the proposed embankments. On the grounds above set forth, the petitioners objected to the bill.

The *locus standi* of riparian owners on the River Tees and others was objected to, because (1) no property of theirs will be taken; (2) no rights or interests of theirs entitling them to be heard will be interfered with; (3) they have no fishing or other riparian rights over the Tees; (4) no such rights will be prejudicially affected; (5) under the Salmon Fisheries Act, 1865, the fisheries of the Tees have been entrusted to the board of conservators for the Tees salmon fisheries district, who would be the proper persons to represent the fishery interests; (6) the petitioners do not represent the general body of riparian owners or conservators, nor does their petition disclose any facts entitling them to be heard apart from such general body; (7) they have no interest entitling them to be heard according to practice.

Pope, Q.C. (for petitioners): These petitioners allege that they are riparian owners who have fishing and other riparian rights over the Tees.

Bidder, Q.C. (for bill): In objection 3 we deny that the petitioners have any fishing or other riparian rights over the Tees. It is, therefore, for them to prove that they have such rights.

The CHAIRMAN: The promoters do not seem to deny that the petitioners are owners.

Pope: If they are riparian owners, they must have riparian rights.

Bidder: This is not like a case in which lands are taken.

Pope: The right of a riparian owner to water is as real as the right to land itself. It is incident to the ownership of the land. Here there is a proposal to intercept two tributaries which would otherwise flow into the Tees. Such an interference with the riparian rights of the

petitioners would give them a ground of action against anybody who proceeded without an Act of Parliament.

Bidder : If any of the petitioners have any rights whatever, I believe their property is 20 miles off.

Pope : As your notices of objection are silent on that point, you cannot take it now. No doubt it may be said that the petition chiefly goes to the point of interference with fishing; but, if a riparian owner has an absolute right, it does not matter what ground he puts forth in his petition. Supposing a riparian owner is entitled to the flow of a stream past his land, he is entitled to object to the bill on any grounds in the same way as a landowner would. The promoters come for an Act which will protect them in doing that which, but for that protection, would be actionable. This is a test of our right to be heard. They are taking away a remedy which we should otherwise have against an injury inflicted upon us.

Mr. RICKARDS : You were bound to allege that in your petition.

Pope : We say that we are riparian owners on the Tees, and that we object to the powers sought by the promoters of impounding and diverting the water of the Lune and Balder. I submit that that would be a good petition as it stands, apart from our allegation as to fishery rights, just as it would be a good petition for a landowner to say, "I am a landowner whose lands are proposed to be taken, and I object to my lands being taken for the construction of these works." It is not necessary for the petitioners here to state specifically the damage which they apprehend. I do not know whether I have any witness here who will prove fishery rights in individual cases, or what those rights are. I am therefore driven to rely upon the other branch of the question, as to riparian ownership. If I show that one or more of the petitioners are riparian owners, their *locus standi* *quâ* riparian owners will be clear.

[Mr. Hugh Dunn, solicitor, of Darlington, was called and said he was trustee of riparian property at Newsham, in which Mr. H. F. Harrison had a life interest. Mr. Harrison was one of the petitioners signing as riparian owners, and his property was on the banks of the Tees, and, as far as witness knew, he enjoyed all the rights incident to riparian ownership. As to other petitioners, witness only knew them as riparian owners by repute, but to the best of his belief they were such. In cross-examination witness said he did not know whether Mr. Harrison had any fishing rights, but he owned the public ferry across the river from Durham to Yorkshire. Witness added that the petitioners' properties of which he spoke were, he believed, situate more than 20 miles below the proposed works.]

Bidder (in reply) : There are only two or three petitioners of whom the witness can say anything, and when you hear what the position of their property is, can their interests be such as entitle them to a hearing against this bill? The witness only speaks positively of one property as extending to the river bank, and there is no evidence whatever to show that any of them have any fishing rights,

though their petition is entirely directed to interference with fishing rights. No doubt if you take a man's land, he need say no more than that he objects to part with his land. But this is not a parallel case to the taking of land. These gentlemen are over 20 miles from the promoters' works, and are therefore beyond the limit within which Parliament considers that even millowners are sensibly affected by bills of this nature. The Court have decided that a person whose land is merely injuriously affected has not a *locus standi* (*Loughborough Park Chapel* case, 1 Clifford & Stephens 45); and even where a man's house suffers from vibration, he has no *locus standi*.

Mr. RICKARDS : There being a legal remedy elsewhere?

Bidder : As there will be in this case if the petitioners are injuriously affected.

The CHAIRMAN : In the case to which you refer the remedy was under the Lands' Clauses Act?

Bidder : Which is incorporated with this bill. As to the fishing, we say that Parliament has entrusted the care of the river to a body of conservators, who are the proper parties to petition; and the fishery board are in favour of the bill.

The CHAIRMAN (after deliberation) : The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners (1) and (2), Durnford & Co.

Petition of (3) IRONMASTERS, MANUFACTURERS, and OTHERS; (4) INHABITANTS and WATER CONSUMERS of MIDDLESBROUGH and NEIGHBOURHOOD.

Water Bill—Inhabitants—Manufacturers—Consumers—Municipal Corporations—Bill Jointly Promoted by—Distinct Boroughs—Joint and Separate Interests of—Partnership—Representation—Principle of—Simple and Combined—Exercise of Joint Powers in Single District—Future Extension of Partnership—Borough Funds' Act—Meeting of Ratepayers—Poll Demanded, but Waived—Effect on Locus Standi—Existing Obligations on Water Company—Transfer of—Quality of Water—Change of, How far Material—Sanitary Authority—Powers of, Beyond District—Public Health Act, 1875.

A bill was promoted by the municipal corporations of Stockton and Middlesbrough, two towns lying at some distance from each other, authorising them to purchase the undertaking of a water company supplying the whole of the district, and to manage this undertaking by means of a joint board, or in default to erect competing works, liberty being reserved to the corporation of a third town, Darlington, to join the partnership on equal terms. The bill was opposed by two sets of petitioners, manu-

facturers and consumers, whose interests lay in or near the town of M., and within the municipal boundary either of S. or M. The objections in both cases were that the petitioners had no distinct interests, but were represented by their own corporation, the bill being promoted under seal; and, further, that they had not taken the proper steps at the local meeting held under the Borough Funds' Act. The petitioners urged very strongly that the introduction of a foreign element into the management of local affairs broke down the principle of representation, which was intended to be confined to local authorities and the ratepayers by whom they were directly elected:

Held, however (apparently in accordance with the spirit of the Public Health Act, 1875), that the petitioners were represented by their own corporation, though another corporation was jointly promoting the bill, and though the proposed works were outside their own district; but as regards the non-insistence by the petitioners on a poll at the public meeting, that such waiver affected the question of expenditure of rates, and not the question of *locus standi*.

The *locus standi* of the ironmasters, manufacturers and others was objected to, because (1) no lands, &c., of theirs were taken or used; (2) they formed but a small portion of the consumers of water supplied by the company, and no meeting of consumers was alleged to have been held; (3) the petitioners did not represent and had no ground to be heard apart from the general body of consumers; (4) no special injury or interference with their interests was authorised; (5) the petitioners being all ratepayers in Stockton or Middlesbrough were not entitled to be heard against the common seals; (6) meetings under the Borough Funds' Act had been held, and no poll had been demanded by the petitioners; (7) they were not entitled to be heard according to practice.

Similar objections were taken to the *locus standi* of the inhabitants and water consumers of Middlesbrough and neighbourhood, with the addition that, being only 67 in number, these petitioners formed but an insignificant fraction of the population of Middlesbrough, and could not claim to represent either the inhabitants or consumers.

Pembroke Stephens (for both petitioners): The inhabitants and water-consumers signing represent a substantial interest; one of them is the largest single ratepayer in the borough, paying for premises in his own occupation between £300 and £400 a-year in rates.

Bidder, Q.C. (for promoters): Whatever he pays, the common seal represents him.

Stephens: This is not the ordinary case of representation, where a local authority buys up the local gas or water company; it is a bill promoted by the corporations of two distinct boroughs, having nothing in common, and with a slice of independent territory between. They will not even carry on the undertaking themselves, but will each contribute nominees to a joint body, appointed for three years and irremovable. The chairman for the time being is to have a casting vote, so that if equal numbers attended, and a Stockton man were in the chair, the interests of Middlesbrough might be completely set aside by the joint body. As a ratepayer, although not as a consumer, I may be precluded, according to practice, from opposing a bill for putting further powers into the hands of the Middlesbrough corporation, but I am surely not precluded from opposing what gives to the Stockton corporation powers, for the first time, in Middlesbrough.

Mr. RICKARDS: You, as a ratepayer, want to oppose a bill promoted by the corporation of Middlesbrough under their seal?

Stephens: That is to say half-promoted.

Bidder: Middlesbrough does not promote one-half of the bill and Stockton the other half.

Stephens: The effect is the same as if they did. Whereas we are now solely under the authority of our own corporation, we shall be subject to the joint control of a foreign corporation. It cannot be maintained that Stockton and Middlesbrough interests jointly are, or will be, the same as Middlesbrough interests separately, which the corporation of Middlesbrough were specially formed to attend to. This is, accordingly, a departure from the principle of representation, upon which we ought to be heard. By clause 93, Darlington may join in the partnership; if so, matters will be made still worse for us, as then we shall only have 6 nominees in the joint body out of 18, instead of 6 out of 12. If the principle is good for these three boroughs, why not for the rest of England? How can any Middlesbrough ratepayer feel sure that he may not find himself next year in partnership with some other town, association with which may be most prejudicial to his interests?

Mr. RICKARDS: The Middlesbrough corporation have come to the conclusion that it would be for the interests of Middlesbrough that their waterworks should be managed jointly between them and Stockton.

Stephens: That is a decision *ultra vires*, from our point of view. They have no power to bring in another corporation.

Mr. RICKARDS: They think it would be for the interests of both corporations that the works should be carried on in concert. By promoting this bill they indicate their opinion that it is for the interest of Middlesbrough that the two corporations should jointly carry on these works. One can quite conceive that it may be a great economy for the two corporations to join.

Stephens: That, of course, would be a matter for proof hereafter. The view I submit is that

the doctrine of representation has hitherto been confined to proposals springing exclusively from the body elected to represent the petitioning ratepayers. In the *Metropolitan Street Improvement Bill*, 1872 (2 Clifford & Stephens 269), where the different local boards and vestries sought to appear against the Metropolitan board of works, the question was directly put whether, if the Metropolitan board of works thought proper, they could apply their funds in gilding St. Paul's? The answer was that, the board having been elected by the districts which would be called upon to contribute the money, and the expenditure being made by the governing body within the district, that expenditure, whether in itself a wise or unwise one, would be an act within their powers. But this is a case where the governing body go outside their own district and associate with themselves foreigners in administering the local affairs. It is as if the Metropolitan board had gone to Bristol and associated with themselves the corporation of Bristol in the gilding of St. Paul's. It would be no answer to objections on this score to say that the Metropolitan board might equally join in gilding the cathedral at Bristol. Reciprocity does not touch the question of alteration of legal status. As to the objection taken that we did not at a public meeting demand a poll, I can prove that a poll was demanded, and that it was only at the urgent solicitation and entreaty of the mayor that the demand was not persisted in, having regard to the expense which must have been entailed upon the borough.

The CHAIRMAN: If you abstained from doing what would have given you a right to be heard, you cannot claim a hearing on that ground.

Stephens: That remedy would have been distinct from what we now seek, for, if successful, it involved the stoppage of the bill as a whole. It may be that the corporation are legitimately entitled to apply their funds in the promotion of a bill to which they attach importance, and yet that the bill, as it stands, may not be a proper one to pass. In the following cases exceptions to the doctrine of representation have been admitted, or the doctrine itself has not been pushed to the extreme limits which would here be necessary. (*Dublin, Wicklow, and Wexford Railway Bill*, 1870 (2 Clifford & Stephens 77); *Clyde and Cumbræ Lighthouses Bill*, 1871 (*Ib.* 157); *Alliance and Dublin Consumers' Gas Bill* (*Ib.* 176). Again, the interests of consumers and inhabitants are not identical, and both are at stake here. (*Edinburgh Street Tramways Bill*, 1873 (1 Clifford & Rickards 16); *Edinburgh and District Water Bill*, 1874 (*Ib.* 64); *Birmingham Gas (No. 1) Bill*, 1871 (*Ib.* 141). In the *Birmingham gas* contest consumers were actually heard against the corporation bill. The bill here is not for a purchase already agreed upon, but to compel the company to part with their property; it is, accordingly, the first step in a serious contest, which may end in the establishment of rival works and the deterioration of the water supply we now enjoy. As to the petition of ironmasters, manufacturers, &c., though some names have been withdrawn, those who remain represent three-fourths of the consumption, and about

two-thirds of the rating of this class of consumers. [*Bidder dissented.*]

Mr. RICKARDS: How does the position of these petitioners differ from that of other consumers?

Stephens: There had been a long contest with the company, ending in an obligation upon them to supply water for trade purposes at a certain rate. The bill as framed, whilst placing a vast monopoly in the hands of the two corporations does not, we think, sufficiently preserve this obligation. Again, though we may get the same quantity, a different kind of water may be supplied to us. In the *Dublin Corporation Waterworks Bill*, 1866,* the brewers and distillers of Dublin, headed by the late Sir A. Guinness, obtained a *locus standi* on this very ground, the existing supply of canal water being about to be discontinued in Dublin, and the Vartry, or river, water introduced. It was admitted that the Vartry water might actually be better in itself, but it was not what had been used for so many years for manufacturing purposes; and accordingly the petitioners sought and, after argument, obtained a hearing, and ultimately clauses for securing to them a continuance of the previous canal supply were inserted, notwithstanding that the Act authorizing the Vartry supply for Dublin had been passed five years previously in 1861.

Mr. RICKARDS: Perhaps the use which was to be made of the water had some influence on the decision. We may assume, I think, that the water here will not be so good to drink, as in the *Dublin* case, when the ironmasters have done with it?

Bidder (in reply): The doctrine of representation must prevail, for the promotion of a bill by the corporation under its common seal is an estoppel to a petition by ratepayers. (*Edinburgh and District Water Bill*, 1874, 1 Clifford & Rickards 65), and this principle holds good whether the petitioners come from Middlesbrough or from Stockton. The joint body which is to be constituted by the bill is outside the present controversy; the real question is—who are promoting the bill—and the answer must be fatal to my friend's claim. The cases cited were mainly those of petitioners, in addition to their own corporation, and not in hostility to them, and are therefore inapplicable. True, in *Birmingham* the consumers were heard in opposition; but having a *locus* against the company's bill, they obtained a *locus* against the corporation bill by consent. This cannot be construed into a precedent. It is now admitted that at the meeting of ratepayers under the Borough Funds' Act, the demand for a poll was withdrawn.

The CHAIRMAN: I doubt whether that has anything to do with *locus standi*; it only affects the application of the funds.

Bidder: It is life and death in the case of a shareholder.

Mr. RICKARDS: That is under a S.O.

Bidder: As to the contention that a corporation cannot go outside their own district, this can no longer be maintained in view of the very wide powers given to sanitary authorities under the Public Health Act. They can not only execute important works beyond their own

* Not reported. MS. notes of case.

boundaries, but can enter into agreements for joint works with other sanitary authorities—the very thing that is complained of here. As to the question of trade supply, we may not, in words, take over the “duties and obligations” of the company, but all their Acts are to be read “as if the joint board had been therein named instead of the company.”

The CHAIRMAN (after deliberation): The *locus standi* of both Petitioners is *Disallowed*.

Agent for Petitioners, G. Norton.

Agents for Bill, Wyatt, Hoskins, & Hooker.

SUTTON GAS BILL.

Petition of (1) GAS CONSUMERS OF SUTTON AND CHEAM.

19th June, 1876.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir HARCOURT JOHNSTONE, M.P.; Sir H. DRUMMOND WOLFF, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas Company—Increase of Capital—Apportionment of Dividend—Extension of Gas District—Gas Consumers Opposing—Unremunerative Expenditure, alleged—Reduced Rates, Prospect of, Diminished by—Exceptional Rates Authorised by Bill—Gas Works' Act—Proposed Division of Gas Undertaking—Gas Dividends Payable only out of Revenue Accruing in New District—Practice—Evidence in House of Lords—Cannot be Cited.

A gas company supplying Sutton and Cheam promoted a bill for increasing their capital and extending their district so as to include Banstead. The petitioners, who numbered 130 out of 550 consumers in Sutton and Cheam, alleged that they would be prejudicially affected by both these proposals, inasmuch as the new capital would be spent upon works which would be in themselves unremunerative—namely, in laying mains and pipes to a large parish, with a scattered population, five miles beyond the company's present limits. The petitioners complained that the prospects of reduced rates in Sutton and Cheam would be greatly diminished through this expenditure. They also complained that power was taken in the bill to charge to the lunatic asylum at Banstead exceptional rates which might be far below those charged to themselves; and they urged that if Banstead were included in the company's limits, such extension should be treated as a separate undertaking, and divi-

dends upon the capital thus spent should be paid only out of revenue accruing from Banstead. No increase in the maximum rates of the company was proposed within their existing district, and it did not appear that the petitioners would be directly affected by any provisions in the bill:

Held, without calling on the promoters, that the petitioners were not entitled to a *locus standi*.

The petition was signed by 130 persons describing themselves as freeholders, leaseholders, gentlemen, &c., and as consumers of gas. They alleged that according to the published returns furnished under the Companies' Acts, to the registrar of joint stock companies, it appeared that in 1873 the company's paid-up capital was £16,669; that it was admitted in the House of Lords that the company were now paying £10 per cent. and charging 5s. per thousand; that the total capital now sought to be confirmed—viz., £75,000 (including borrowing powers), could only be sought for the purpose of serving Banstead and the lunatic asylum at the expense of consumers in Sutton and Cheam; that by clause 49 of the bill, the maximum price was to be 5s. 10d., and in Banstead (except at the lunatic asylum) 6s. 4d. per thousand, with a rebate of 6d. per thousand to consumers in Sutton and Cheam if the accounts were paid within a month of quarter-day; that the bill proposed to sanction the raising of £30,000 additional capital, and permit the company to receive £10 per cent. on £25,000, and £7 per cent. on £35,000; that the petitioners would be most injuriously affected by the bill, especially by the extension of the company's district, the joint population of Sutton and Cheam (which lie side by side) being 8,167 against 1,668 in Banstead, which is a parish five miles in length and upwards of two in breadth; that it was unfair and unjust that consumers of Sutton and Cheam should be called upon to contribute towards the expense of supplying Banstead, as they would really be under the bill; that while the company's present limits of supply did not at any one point exceed the distance of three miles from the company's works, the proposed inclusion of Banstead would authorise the laying down of mains and pipes and extend the limits of supply for a further distance of upwards of five miles beyond those limits; and that the promoters under the bill would be able to charge the lunatic asylum rates far below the Sutton and Cheam rate, charging the loss upon the general rate paid by consumers there.

The *locus standi* of gas consumers in Sutton and Cheam was objected to, because (1) no lands, &c., of theirs are taken; (2) the petition was not sanctioned by the general body of consumers, or by any public meeting; (3) it is signed by only 130 out of 550 consumers in the proposed district of supply, and, therefore, does not fairly represent the general body of consumers or inhabitants; (4) the petitioners are not consumers of gas in Sutton and Cheam; (5) they

are not entitled to be heard apart from the general body of consumers; (6) they claim to be heard against the proposed increase of capital, but it is contrary to the practice of Parliament to allow consumers of gas to be heard upon that ground; (7) the proposed district of supply is wholly within the district of the rural sanitary authority of Epsom, which has the local management of this district, and by whom the petitioners are represented; (8) the petitioners are not entitled to be heard consistently with practice.

Gale (Parliamentary Agent, for petitioners): According to practice it is not necessary to show that the petition emanates from a public meeting, and the cases show that 130 out of 550 consumers constitute a substantial representation. Objection 4 denies that we are consumers.

Michael (for promoters): I will not call on you to prove that the petitioners are consumers.

Mr. RICKARDS: Were you heard before the House of Lords?

Gale: Yes, and fully heard. I will refer to the evidence taken there.

Michael: According to practice you cannot refer here to the evidence taken in the House of Lords. (*Merionethshire Railway Bill*, 2 Clifford & Stephens 182.)

Mr. RICKARDS: That is our practice.

The CHAIRMAN: Does the bill propose to increase the maximum rate?

Gale: Not in Sutton and Cheam.

The CHAIRMAN: As to the alleged grievance of a possible supply to the lunatic asylum at a cheaper rate, could not the company do this without coming for Parliamentary powers?

Michael: Yes; they might charge a shilling per thousand if they pleased, without any Act of Parliament. *Ex abundante cautela*, the promoters have inserted a clause enabling them to make special contracts in the case of the lunatic asylum, but this power is really given by the Gas Works' Act, 1847.

Gale: That I do not admit. Our complaint is that we shall stand no chance of any reduction in the price of our gas if the petitioners are allowed to lay out a large amount of capital in supplying Banstead. We therefore ask to be allowed to go before the Committee, and represent that a separate capital should be appropriated by the company for Banstead purposes; that a separate debtor and creditor account should be kept in respect of that capital; and that the dividend upon such capital should be paid only out of the Banstead gas rates. We ask, in short, that the Banstead supply should be treated as a separate undertaking or struck out of the bill, and that the capital should be decreased by one-half. Surely gas consumers whose interests are so directly affected thereby have a right to be heard against any proposal by a company to increase its capital. As to the objection that we are represented by the rural sanitary authority, it has been decided that consumers may be heard apart from the local authority.

Michael: I do not insist on that objection. [*He was not called on to reply.*]

The CHAIRMAN: We do not see that the Petitioners have any right to be heard. Their *locus standi* must be disallowed.

Locus standi Disallowed.

Agent for Petitioners, *Gale*.

Petitions of (2) HOUSEHOLDERS OF BANSTEAD; and (8) VESTRY OF BANSTEAD.

Gas Bill—Extension of Limits—Monopoly Objected to by Inhabitants of New District—And by Vestry—Differential Rates, Complaint of—Distance of New District from Company's Works—Statutory Powers, Effect of Grant of, for Gas Supply, Considered—No Grievance Caused to Inhabitants thereby.

Against the bill of a gas company, which proposed to extend its district to B., a petition was presented by 40 inhabitants of B., who alleged that they would be more conveniently supplied from gasworks in the neighbouring town of E.; that the bill would give the company a monopoly of their district; and that under its provisions differential rates would be charged more favourable to the existing district of the company than to that in which the petitioners resided. The vestry of B. also presented a separate petition on similar grounds. There was no proposal by the gas company of E. to supply the district of B.:

Held, without reply on the part of promoters, that no grievance was caused to inhabitants by a gas company seeking for powers to supply gas within their district, no persons being compelled to take the gas, and all persons being at liberty also to manufacture their own; and *locus standi*, therefore, of both petitioners disallowed.

The *locus standi* of householders of Banstead was objected to, because (1) no lands of theirs were taken; (2) the petition emanated from no public meeting; (3, 4, and 5) only 40 persons signed the petition; they did not, therefore, represent, and had no interests apart from, the general body of inhabitants, and were not entitled to be separately heard; (6) they were represented by the vestry of Banstead who had petitioned; (7, 8, 9, and 10) their interests could not be distinguished from those of the vestry; they did not oppose the bill in the House of Lords; their opposition was vexatious and unreasonable; and they could not be heard consistently with practice.

The *locus standi* of the vestry of Banstead was objected to, because (1) no lands of theirs are taken; (2) they are not the municipal or other authority having the local management of any town or district injuriously affected by the bill; (3) the bill seeks no powers which affect the petitioners; (4) they merely echo the petition of the householders; (5) the petition was not authorised and signed at any meeting of the vestry duly convened and constituted; (6) they did not oppose in the House of Lords, and their opposition is vexatious and unreasonable; (7) they cannot be heard consistently with practice.

Wakeford (Parliamentary Agent, for both petitioners): We complain that while the maximum charge for gas under the bill will be 5s. 10d. in Sutton and Cheam, with 6d. rebate for prompt payment, we are to pay 6s. 4d. The central portion of our parish is situated at a great distance from the company's works, the population of the parish being 1,600, and the number of inhabited houses about 300. We say that, in the event of a gas supply being required, and failing works in the parish itself, it could be obtained more conveniently, and of better illuminating quality, from Epsom, a portion of our parish indeed being already supplied from Epsom. We object also to the differential rate proposed to our prejudice, and to the monopoly of the Banstead district which this bill will secure to the promoters, preventing us or future consumers from bringing in any other company to supply us with gas at a cheaper rate.

The CHAIRMAN: That objection would be fatal to any bill, and to any company going anywhere for the first time.

Wakeford: The objection is that we should be included in the limits of this company against our consent.

Mr. RICKARDS: You are not obliged to burn the gas against your consent.

The CHAIRMAN: Were you heard in the House of Lords?

Wakeford: No; we did not petition.

Michael (for promoters): The point on which I shall mainly rely is that 40 inhabitants cannot be heard out of 1,600, and that there was no public meeting.

The CHAIRMAN: We do not yet see the grievance complained of, even assuming that the whole 1,600 came here.

Mr. RICKARDS: This case is that some one is going to open a shop in Banstead to supply gas to those who like to take it.

Wakeford: The shop having been once opened to supply gas at a certain fixed price, anyone else will be precluded from opening another shop for the supply of the same article. The petition is signed by Lord Egmont, the vicar, two churchwardens, and by gentlemen who may be fairly taken to represent the intelligence and respectability of Banstead. In several cases a smaller proportion than 40 out of 1,600 inhabitants has been heard.

Mr. RICKARDS: I do not think that is the pinch of the case. How will the bill injuriously affect the district? To supply gas in your district against your wish is not an injury.

The CHAIRMAN: And the differential rate of

which you complain is owing to the distance from the company's works.

Wakeford: I submit that we are entitled to go before the Committee, and say we ought not to be charged so high a rate.

The CHAIRMAN: Nobody is obliged to take the gas.

Mr. RICKARDS: If the company compelled you to take the gas the case would be different. You could not object to a butcher setting up a shop in Banstead to supply meat at a certain price?

Wakeford: If the result were to establish him there as the sole butcher, with a monopoly of supply, I should object.

The CHAIRMAN: These 40 gentlemen may make their own gas, and any company may come and establish gasworks here.

Wakeford: They would not have much chance of success when Parliament had granted powers to another company to supply the district already.

The CHAIRMAN: You cannot carry the case of the vestry any farther than that of the householders?

Wakeford: No.

Michael: Had the case of the vestry been gone into I should have objected that they had nothing to do with the roads, and that their petition was signed by only one person.

The CHAIRMAN: The *locus standi* of the householders of Banstead is *Disallowed*. The *locus standi* of the vestry of Banstead is *Disallowed*.

Agents for Petitioners, *Simson, Wakeford & Simson*.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

TYNE IMPROVEMENT BILL.

Petition of the NEWCASTLE and GATESHEAD
INCORPORATED CHAMBER OF COMMERCE.

5th April, 1876.—(Before Mr. PEMBERTON, M.P.,
in the Chair; Sir H. D. WOLFF, M.P.; and
Mr. RICKARDS.)

Chamber of Commerce—Representation of Trade
by—Incorporation of—Effect upon Petition—
Traders—Distinct Interests of.

Against a bill for increasing river dues, petitions raising substantially the same issues were presented by merchants, traders, and others, and by an incorporated Chamber of Commerce under their common seal. The *locus standi* of the merchants, &c., was admitted, but as to the petition of the Chamber of Commerce it was objected that they did not allege that as a corporation they were injuriously affected, and, further, had no distinct interest from that of the other petitioners:

Held, that the Chamber of Commerce had no *locus standi*, their status as petitioners not being changed by the fact of their incorporation with the special object (*inter alia*) of promoting and opposing bills in Parliament.

(*Per Cur.*) The incorporation of a Chamber of Commerce makes no difference as to their right of petitioning, beyond curing any technical defect which may exist in the petition.

The bill was one for altering and consolidating the dues levied by the Tyne Improvement Commissioners and for other purposes. The petitioners objected to the proposed increase of dues as being deeply interested in the good management of the Tyne, and in the progress and prosperity of the Tyne ports, "both as a corporation, and as representing manufacturers, traders, merchants, payers of dues, shipowners, shipbuilders, and coal owners;" and they alleged that such increase of dues was not required and would be highly prejudicial to their interest and the trade of the district. The petitioners' association was incorporated in January, 1875, by license from the Board of Trade, under sec. 23 of the Joint Stock Companies' Act, 1867, the objects specified in the articles of association being—"The redressing of all grievances in any way affecting the trade and commerce, the shipping and manufactures of the county, or of the district; the suggesting or facilitating of any measures calculated to promote the commercial interests of the community; and, generally, the attainment of such objects connected therewith as the exertions of individuals may be less adequate to accomplish; the promoting, supporting, or opposing of legislative and other measures, whether public or private, affecting trades and manufactures, the undertaking by arbitration of the settlement of disputes arising out of trade; the transacting of all such other things as are incidental or conducive to the attainment of the above objects."

The *locus standi* of the petitioners was objected to, because (1) the petitioners are not the municipal or other authority having the local management of any town or district affected by the bill; (2) they are not a trading corporation, and cannot be affected; (3) they are a private club or association, and do not represent either the whole body or any class of manufacturers, traders, merchants, payers of dues, shipowners, shipbuilders, and coalowners, interested in the trade of the Tyne, and carrying on business on its banks; (4) according to the present constitution of the commissioners the petitioners are not entitled to any separate representation in the commission; (5) a petition has been presented against the bill by manufacturers, traders, &c., and by owners, lessees and occupiers of coal mines using the Tyne or the docks, whose *locus standi* is not objected to, and the petitioners have no distinct interest from that of these persons; (6) no facts or reasons

are stated by the petitioners entitling them to be heard.

Little, Q.C. (for petitioners): This Chamber of Commerce is incorporated, and therefore its constitution differs from that of all other chambers whose cases have come before the Court. It consists of nearly 450 members, comprising shipowners, manufacturers, engineers, ironmasters, colliery owners, and other persons interested, not only in Newcastle and Gateshead, but in the Tyne generally. The chamber being incorporated by the certificate of the Board of Trade, and having a common seal, the petition is as much the petition of the 450 members as if each had signed it.

Mr. RICKARDS: You do not say that you, as a corporation, are injuriously affected by the bill?

Little: No; but as our corporation is established "to promote, support, or oppose legislative or other measures, whether public or private, affecting trade and manufactures," it is competent to us to petition with respect to anything affecting the trade and manufactures of the district.

Sir H. D. WOLFF: Your certificate of incorporation only goes to limit your liability; it does not give you any power?

Little: It shows that the Board of Trade are satisfied that the object of the association is the promotion of commerce. It also gives us a common seal, and thereby enables us to sign our petitions, as it were, collectively.

Mr. RICKARDS: The object of a Chamber of Commerce is to watch over the interests of trade generally, but their views on such matters may not coincide with the view taken by particular trades in the district.

Little: Here there is a petition of representatives of particular trades, but they may be settled with and withdraw their petition.

Mr. RICKARDS: The Chamber of Commerce claims to represent public interests and not individual interests. In that capacity they may be a very proper body to petition against the second reading of a bill, or give advice to Parliament; it is another question whether they can speak on behalf of individual interests.

Little: When you have a petition signed by 450 traders and merchants from all places along the river, they represent a substantial portion of the trade, and should not be excluded because there is another petition signed by some of them representing particular interests. In the *Tees Conservancy Bill* (2 Clifford & Stephens 122), the petitioning Chamber of Commerce were not incorporated; the petition was signed without adequate authority, and was identical with another petition numerously signed by traders. So in the *North Eastern* case (*Ib.* 149); but there traders were heard as well as the municipal corporation. Surely, then, a corporation which, like ours, represents trade far more than a municipal corporation can do, has a right to be heard.

Mr. RICKARDS: A municipal corporation is not heard as representing trade, but as representing the interests of a town. There is no case in which a Chamber of Commerce has been heard?

Little: No.

Mr. RICKARDS: A Chamber of Commerce is a deliberative body, a sort of debating society; they meet and discuss the interests of the trade of the district?

Littler: Yes; and having come to the conclusion that a certain bill affects the trade, they petition against it.

The CHAIRMAN: Here the traders and the Chamber of Commerce petition separately?

Littler: Certain members of the Chamber of Commerce sign the petition of the traders, but the interests represented in the traders' petition and those represented in the petition of the Chamber may be distinct.

Pope, Q.C. (for bill): The Chamber of Commerce does not petition as representing distinct interests, but as representing all interests.

Mr. RICKARDS: Here one of the stated functions of the Chamber of Commerce is that of promoting and opposing bills in Parliament. But, supposing a number of landowners formed an association to protect landowners against the aggression of railway companies, would such a society have a *locus standi* against a railway bill?

Littler: There could be no community of interests in such a case; there is such a community among these various traders. Suppose a private undertaking proposed to tax all the lands in a particular county. If the landowners in that county formed themselves into an association to defend their interests, and agreed to act by a common seal, surely they might do so. The question here is whether a substantial interest is not represented by this petition, and whether traders, who might have petitioned individually if they liked, have shut themselves out from the right of petition by delegating their individual rights under a common seal.

Pope (in reply): Chambers of Commerce having in no case been heard, the question is, does incorporation make any difference? Are such bodies more representative with a common seal than without one?

The CHAIRMAN: We think that incorporation makes no difference beyond curing any technical defect there may be in the petition. Putting aside for the moment the fact that there is a petition of traders, we should regard this merely as the petition of an ordinary Chamber of Commerce, it being open to us to go into the question who were the members of whom it consisted.

Pope: If the petition here had alleged that the Chamber represented certain trading interests—not general interests—affected by the Bill and that they as representing those interests had held a meeting and determined to petition, it would have been simply a traders' petition. But these petitioners do not come here as persons whose individual rights are injured; they petition as a corporation alleging an injury to their district "both as a corporation and as representing the manufacturers," &c., of the district. They do not, however, set out any particular provisions in the bill which would affect the interests of individual members of the corporation. Supposing a bill were before Parliament, affecting the trade of the Tyne generally, no Minister would refuse to receive a deputation from the Newcastle Chamber of Com-

merce. He would listen to them with respect, not because they represented particular interests which were affected, but because they were men of experience and local knowledge, professing to represent the whole trade, and forming, in fact, a sort of local parliament. They do not profess to attend to the interests of the iron trade, for example, as opposed to the interests of the coal trade. In this very case it will probably be suggested that the dues are unduly favourable to coal-owners and unduly oppressive to the iron trade. But this is a matter with which the Chamber of Commerce cannot deal, because it professes to represent not individual trades, but the general trade, and because it has no distinct interests of its own. Here the *locus standi* of the traders is admitted, and substantially they are the same people as are members of the Chamber of Commerce, and make the same allegations.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Pezron, Clabon & Fearon*.

Agents for Petitioners, *Martin & Leslie*.

UPPER MERSEY NAVIGATION BILL.

Petition of JUSTICES OF THE PEACE OF THE COUNTY OF CHESTER.

9th March, 1876.—(Before Mr. RAIKES, M.P., Chairman of Committees, in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BISHAM-CARTER.)

River, Deepening of—Tolls, Imposition of—Navigation Communicating with River Injurious Affected—Navigation Trustees—County Justices Interested in Surplus Tolls—Cestuis que Trusts, Representation of, by Trustees—Distinct Interests of.

The Weaver navigation is managed by a public trust, who levy tolls and apply them in maintaining the navigation. If any surplus remains it is paid over to the justices of Cheshire, who, under statutory authority, receive and apply it for repairs of bridges and highways, and other public purposes within the county. A bill was now promoted for improving the upper waters of the Mersey, into which the Weaver flows, and for constituting, with this object, a commission, upon which the Weaver trustees and the justices were to be represented by one member from each body. Separate petitions were presented against the bill by both bodies. The *locus standi* of the Weaver trustees was not disputed, but as to the justices it was objected that their interest

was substantially the same as the interest of the trustees, by whom, accordingly, they were represented as *cestuis que trusts* :

Held, that the justices had a distinct interest entitling them to appear upon a separate petition.

The bill proposed to constitute a body to be called "the Upper Mersey Navigation Commissioners," one to be appointed by the county justices of Chester, and one by the River Weaver Navigation Commissioners, and the body thus constituted were to have authority to light, buoy, and deepen the channel of the upper Mersey and levy tolls and dues. The river Weaver empties itself into the Mersey at a point which would be within the limits of the new jurisdiction. The Weaver trustees had therefore petitioned, and their *locus standi* was admitted. The county justices claimed a separate *locus standi* on the ground that under Acts passed in 1721 and 1759 the profits of the Weaver trust, after paying interest and expenses, were to be applied towards amending and repairing the county bridges and afterwards towards the repair of the highways, or such other public charges as the justices at Quarter Sessions should direct. The petitioners alleged that the proposed works might prejudicially affect the Weaver navigation, and diminish the revenue of the Weaver trust, thus impairing their statutory rights to the surplus of this revenue.

The *locus standi* of the petitioners was objected to, because (1) no property, rights or interests of theirs will be affected; (2) they allege that they are interested in the tolls, rates, or duties leviable in respect of the river Weaver navigation, but the trustees of that navigation have petitioned against the bill, and it is contrary to practice to allow persons remotely interested in property to appear against a bill when the persons directly interested appear by a separate petition; (3) the trustees of the river Weaver navigation have the sole control and management of that navigation, and are the only persons entitled to oppose the bill with respect to any matters affecting that navigation; (4) the petitioners have no interest enabling them to be heard.

Pembroke Stephens (for petitioners): By proposing that one member of the newly-constituted commission shall be appointed by the justices, the promoters start with the admission that we have an interest in the subject-matter of the bill. Being therefore represented upon the commission, we could not be heard against any future bill promoted by that body. But we are not now represented by the Weaver trustees upon this question, for our interest begins exactly where the interest of the Weaver trustees ends. We have a statutory interest in the surplus tolls of the Weaver navigation over and above those required to maintain the navigation. Can it be said then, that we are not entitled to appear upon a bill proposing to create a commission which will control the upper waters of the Mersey—the door to the Weaver

navigation? Surely we have an independent and a substantial interest entitling us to see that nothing shall be done to injure the navigation or diminish its revenue. We say that the proposed works may do irreparable injury to the navigation. We also object to the constitution of the proposed commission. In 1857, the justices were allowed to appear on a separate petition from that of the Weaver trustees, against a bill for reducing the tolls on the Weaver navigation, though counsel for the bill asked the Committee to consolidate the two petitions. Again in 1872, upon a bill promoted by the Weaver trustees, this Court decided in accordance with the argument of counsel, that the proper persons to raise the question there in issue were the justices of Cheshire. (2 Clifford & Stephens 240.) As the promoters themselves propose to give us a representation upon the new commission, distinct from the representation of the Weaver trustees, they recognise the fact that we have distinct interests, and are therefore estopped from arguing that the interests of the two bodies are identical, requiring only a joint petition. Unless we are heard, an arrangement may be made between the promoters and the Weaver trustees under which we may never get any surplus. The *Alloa* case (1 Clifford & Rickards 1) is in my favour.

Saunders (for bill): In 1857 there was an attack upon the tolls, and the interests of the navigation and of the justices might have been distinct, for the pockets of the ratepayers were directly affected. Here, however, the works we propose will affect the justices only indirectly, and they are represented by the Weaver trustees. The question whether trustees and their *cestuis que trusts* can be heard separately against a bill does not seem to have been decided. But these petitioners are more remotely interested than *cestuis que trusts* would be, because the justices are simply interested in right of the ratepayers, and determine how any surplus shall be spent for public purposes. If both these bodies are heard, a conflict of opinion may arise between them, and the justices, who know nothing about the navigation, may take a different view from that adopted by the trustees; the justices may be ready to come to terms with the promoters, while the trustees do not accept those terms. Who, then, is to decide between them? Surely the trustees, who have a solid and substantial interest in the navigation, are the people who ought to represent every one, so that the promoters and the Committee may know with whom they have to deal. If the Weaver trustees did not appear, I am not saying that the justices should not be heard; but the question is whether the Court are to be burdened with two oppositions when one is sufficient. Practically, the two bodies have the same interests, and, as the Weaver trust consists for the most part of justices, the two bodies are also practically one.

Locus standi Allowed.

Agents for Bill, *Wyatt, Hoskins, & Hooker.*

Agents for Petitioners, *Martin & Leslie.*

UPPINGHAM WATER BILL.

Petition of the RURAL SANITARY AUTHORITY for the DISTRICT of UPPINGHAM.

9th March, 1876. — (Before Mr. RAIKES, M.P., Chairman of Committees, in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Board of Guardians, a Corporation—Rural Sanitary Authority—Petition of, not under Seal—Public Health Act, 1875—"Local Authority," defined in.

A committee of poor law guardians, acting as the rural sanitary authority in the district of U., petitioned against a bill promoted by a private company for supplying the district with water. The petition was signed by the chairman in pursuance of a resolution passed by the sanitary authority, and it appeared that, as such authority, the guardians had no common seal. Their *locus standi* was objected to on the ground that under the Public Health Act, 1875, rural as well as urban sanitary authorities were bound to have a common seal, and that as a corporate body the petitioners here could not petition otherwise than under seal:

Held, that the petition as signed was not affected by this technical objection, and *locus standi*, therefore, allowed.

The *locus standi* of the petitioners was objected to, because (1) the guardians of the Uppingham union are, by the Public Health Act, 1875, constituted the rural sanitary authority for the district, and are by statute constituted a corporation and have a common seal, and, according to practice, can only be heard upon petition under their common seal; (2) the rural sanitary authority is defined by the Public Health Act to be a local authority, and by the same Act local authorities are constituted corporations, and are directed to present petitions, and to do various acts under their common seal, but as the petition is not sealed the petitioners cannot appear; (3 and 4) only one member of the rural sanitary authority of Uppingham has signed the petition, and it does not appear that he did so on behalf of such authority, or by their authority or direction; (5, 6, and 7) no property, rights, or easements of the petitioners are affected, no stream or watercourse belonging to them will be intercepted or interfered with, and it is not alleged that the inhabitants of the district will be injuriously affected; (8) the petitioners are sufficiently protected by the general law from any interference with or damage to their

property by the proposed works; (9) the petition discloses no ground entitling the person signing it or the rural sanitary authority to a hearing.

Pembroke Stephens (for petitioners): Under the sanitary Acts, local authorities, whether urban or rural, are charged with the duty of supplying water to their respective districts. The promoters are seeking to constitute themselves a company for the supply of water in our district, and therefore our interest is clear. As to the technical objection, the rural sanitary authority of Uppingham consists, and has consisted since 1872, of a committee of guardians of the poor law union, and *quid* rural sanitary authority they have been in the habit of signing all formal documents by resolution, authenticated by the signature of the chairman. The Public Health Act, 1875, requires that urban sanitary authorities shall have common seals, but contains no similar provision affecting rural sanitary authorities; and by the schedule ("Rules applicable to committees of local bodies," &c.) orders or resolutions are to be received as evidence in all legal proceedings if signed by the chairman of the meeting. We have complied with this rule, our petition being signed by "Barnard Smith, chairman of the sanitary authority of Uppingham Union, by resolution of the board, 23rd February, 1876." On that day, as set forth in the minutes, the petition was adopted at a meeting of the rural sanitary authority of Uppingham. The case of the *Walsall Improvement Commissioners* (1 Clifford and Rickards 142) is in point.

O'Hara (for the promoters): The Public Health Act, 1875, provides that all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural sanitary authority, and further declares that the rural sanitary authority are the same body as the guardians of the union or parish (sec. 9). By the interpretation clause, "local authority" is defined to mean urban and rural sanitary authority; and for the purpose of acquiring lands compulsorily, the local authority may "present a petition under their seal to the Local Government Board" (sec. 76, subsec. 3).

Mr. RICKARDS: Must you not first show that this body has a common seal?

O'Hara: As a board of guardians we know they are a body corporate.

Stephens: As a board of guardians they are a distinct body.

O'Hara: The Act further provides that the local authority shall appoint arbitrators (sec. 180), make bye-laws (sec. 182), and effect mortgages (sec. 238), under their common seal. It is not possible for the rural sanitary authority here to petition otherwise than under seal—to submit to Parliament a formal document signed in an informal manner.

Stephens: By sec. 259, any local authority may appear in any court by their clerk or by any member authorised by resolution.

O'Hara: That section applies to proceedings in a court of law, and enables local authorities to appear by their officer, but it does not apply to a solemn act such as a petition to Parliament.

The CHAIRMAN: (after deliberation): The *locus standi* of the Petitioners is Allowed.

Agents for Bill, Marriot & Jordan.

Agent for Petitioners, Bell.

WALSALL GAS PURCHASE AND BOROUGH EXTENSION BILL.

Petition of the LONDON and NORTH-WESTERN RAILWAY COMPANY.

9th March, 1876.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Borough Extension—Railway Station included in—Liability of, to Borough Rating—Gas Purchase proposed by Municipality—Opposed by Railway Company—New Rates—Land Injurious Affected by—General Locus Standi of Owners Complaining of.

A bill promoted by a municipal corporation for the purchase of a gas undertaking and the extension of the borough boundary, was opposed by a railway company, whose station and works would now be included within the borough. It was admitted that, being thereby for the first time made liable to pay borough rates, the railway company were entitled to be heard against the proposed extension, but the promoters contended that the company could not be heard against the gas purchase, as they would only be affected by it in common with other ratepayers in the new area:

Held, following former precedents, that an owner whose land may be depreciated in value by liability to new rates, holds the same position for purposes of *locus standi* as an owner whose land is compulsorily taken, and that the petitioning company were, therefore, entitled to be heard generally against the whole bill.

The bill was promoted by the corporation of Walsall, its object being to extend the municipal boundaries of Walsall, by which extension the station and works of the petitioners would be included within the taxable area of the borough. They objected to such extension, fearing lest they should lose the benefit which they now enjoyed of differential rating, in the proportion of only one-fourth part of the net annual value of their property. They also objected to the

bill because it empowered the corporation to take over the works of the Birmingham and Staffordshire gaslight company; and they complained of the large expenditure which would thus be incurred, and the heavy additional charges which would be imposed on the borough fund and borough rate, especially having regard to the fact that the interests of the petitioners differed widely from those of the inhabitants generally.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands of theirs are taken and no powers contained in the bill will interfere with their railways, &c.; (3) as owners and occupiers within the limits of the extended borough, the petitioners will be affected in the same way as all other ratepayers within that area, and are not entitled to be heard to claim any exemption or partial exemption from contribution to the borough rate within these extended limits; (4) nothing in the bill will deprive the petitioners of any exemption from rating to which they are now entitled; (5) the petitioners are not affected by the bill in a different manner from other ratepayers; (6 and 7) the petition contains irrelevant matter, and shows no sufficient ground for a hearing.

Pope, Q.C. (for petitioners): As to the proposed extension of the municipal limits, which would include our station and railway, the case is governed by the *Pontefract Borough Extension Bill*. (1 Clifford & Rickards 184.) Then we ask to be heard against the purchase of the gas-works, and the distinction between this and the *Birmingham* case (*Ib.*, 138) is manifest. There, no extension of the borough was sought, and the Court decided that when a municipal corporation simply proposes to buy gas and water undertakings, the risk that some increased charge may fall upon the borough fund does not entitle railway companies to be heard to claim exemption from the borough rate, because their interests are not practically distinct from those of the general ratepayers liable to that rate. Here, however, our property is not now liable to the borough rate, and the gas purchase will therefore affect us differently from ordinary ratepayers. In the *Birmingham* case, the railway companies were already ratepayers, and could only allege a contingent liability to an increased borough rate. Here, we shall be subjected to new taxation, and as the gas purchase will be a charge upon the borough rate, that is part of the new liability to which we are for the first time subjected. We are, therefore, entitled to a general *locus standi* against the whole bill; first, as landowners, upon the *Pontefract* precedent; and secondly, because of our special interest in a purchase which may increase the taxation to which we are to be subjected.

Clerk, Q.C. (for bill): I concede the *locus standi* of the North Western company against the extension of the borough, but the decision in the *Birmingham* case precludes them from being heard against the gas purchase, and they are not entitled to a general *locus standi* as landowners. We do not touch them as landowners, except as far as we touch them in common with all the other ratepayers within the new area.

The CHAIRMAN: You injuriously affect their land?

Clerk: Simply in respect of rating.

Mr. RICKARDS: In the *St. Helen's* case (1 Clifford & Stephens 52), the *locus standi* was not limited.

Clerk: A landowner who is merely affected *quâ* ratepayer is surely in a very different position from a landowner whose land is to be compulsorily taken. In the latter case, he has a right to resist the possible taking of his land by any argument he can urge against the bill as a whole. It is quite another thing when he merely complains as a ratepayer that increased taxation will be imposed upon him, and that thus the value of his land will be diminished.

Mr. RICKARDS: In the *Pontefract* case, all the observations of the Court seem to imply that a landowner, the value of whose property will be diminished because it will be subject to additional taxation, stands on the same footing as a landowner whose land is compulsorily taken.

Clerk: Such a doctrine hardly seems reasonable. There is no distinction between a landowner whose land is taxed and an occupier who is taxed, except that the one pays directly while the other pays by losing part of the amount which he would otherwise receive annually, or by the loss on the sum he would receive if he sold his land.

The CHAIRMAN: Suppose a landowner's estate is brought within the range of an impost, which takes away half the value of the property. His land is as injuriously affected as if the promoters were going to take half an acre compulsorily.

Clerk: Granted; but where is the distinction between the owner who suffers in that way and the tenant who now pays £100 a year, and may become liable to an additional impost of £50?

Pope: This very point was raised in the *Brighton and Hove* case. (1 Clifford and Rickards 32.)

The CHAIRMAN (after deliberation): We think that, in accordance with previous decisions, we must give a general *locus standi* in this case.

Agents for Bill, *Durnford & Co.*

Agent for Petitioners, *Roberts.*

WATERFORD AND WEXFORD RAILWAY BILL.

Petition of the WEXFORD HARBOUR COMMISSIONERS.

19th June, 1876.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir HARCOURT JOHNSTONE, M.P.; Sir H. DRUMMOND WOLFF, M.P.; and Mr. RICKARDS.)

Railway—Extension of Time Bill—Virtual Revival of Lapsed Powers, Alleged—Works Authorised by Previous Acts—Time Extended for Completing—Not for Completing Works

Authorised in Extension of Time Act itself—Quay, Width of, Provided for by Previous Act—Harbour Commissioners, Attempt of, to Increase Width by Bill—Previous Legislation—*Res Integra*—Practice—S. O. not Complied with—Non-appearance by Petitioners before Examiners, Effect of—Clauses Accepted by Petitioners and Inserted in Bill—Clauses Tendered by Petitioners and Rejected by Committee—Effect of in Second House—Rule as to—Preamble, Different Practice as to Passing of, in Lords and Commons.

Under an arrangement entered into with the harbour commissioners of W., a railway company were empowered in 1871 to make a line upon the commissioners' wharf at W., on condition of increasing the width of the wharf by a wooden staging ten feet wide carried upon piles along the water's edge. In 1874 the company, not having begun the works authorised in 1871, introduced a bill extending, by a period of three years, the time limited by the Act of 1871 "for constructing and completing the railways and works authorised by the previous Acts of the company." They now introduced a bill which would extend the time for constructing all the authorised works of the company, including those authorised by the Act of 1871. The petitioners, being the harbour commissioners on whose quay the proposed line was to be made, alleged that as the Act of 1871 did not extend the time for constructing the works thereby authorised but only works previously authorised, the powers granted to the company over the quay in 1871 had lapsed by effluxion of time, and the present bill was, as regards those works, a bill for revival of powers, not for extension of time. The petitioners, therefore, contended that they had a right to treat this application as *res integra*, and accordingly asked that the addition to the quay, to be made by the railway company, should be 20 feet instead of 10 feet wide. For the promoters it was urged that the Act of 1871 prescribed no time for completing the works then authorised; and further, that if the quay were to be widened, the S. O. required the promoters to lodge plans of the works, and as no plans had been lodged, the petitioners were asking for that which no Committee could grant:

Held (1) that there was *prima facie* ground for contending that, under the Acts of 1871 and

1874, the powers of the promoters over the quay had expired, so that, as regards the quay works, the bill was in effect a revival of powers bill; and (2) that the petitioners were not bound to go before the examiner to raise objections upon S. O., and were not thereby precluded from appearing before a Committee. Their *locus standi* was, therefore, allowed against clauses referring to the railway and new works upon the quay, together with so much of the preamble as related thereto.

Upon a bill originating in the House of Lords, petitioners appeared by counsel and tendered a clause which was rejected by the Committee, accepting two clauses which, with alterations suggested by them, were inserted in the bill. A petition being now presented by them, raising substantially the same issues, it was objected that they were estopped from appearing in the second house. It appeared that they had withdrawn from the case in the Lords' Committee before the preamble was passed or proved, and they alleged that the clauses they had accepted were of minor importance, and had only been acquiesced in by them, conditionally upon the adoption of the chief clause which they had tendered, but the Committee had rejected:

Held, that by what had occurred before the Committee of the House of Lords, the petitioners were not excluded from urging the same points in the second house, upon clauses, and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to, because (1) they opposed the bill in the Select Committee of the House of Lords, and were there heard by counsel and witnesses, the result of the discussion being the introduction into the bill of clauses 5, 6 and 7. Clauses 6 and 7 were accepted by them; indeed, clause 6 was altered by them, and as altered was inserted in the bill; (2) the petitioners proposed in the Lords' Committee a clause, whereby it was sought to enact that the width of the quay and wharf (authorised and prescribed by sec. 7 of the Act of 1871, as to be not less than 10 feet) should be not less than 20 feet, but this clause was rejected and clause 5 was introduced in its stead, and is a beneficial one to the petitioners; (3) they urge that the works mentioned in sec. 7 of the Act of 1871 should be altered as to width and materials, but they are not entitled to be heard in support of any such allegation, as it is foreign to, and beyond the scope of, the bill; (4) having

regard to the action of the petitioners and what occurred in the other House of Parliament, the petitioners are not entitled to be heard, either upon the preamble or clauses of the bill; (5) they state no other grounds which entitle them to be heard.

Aspinall, Q.C. (for petitioners): By Acts of 1864 and 1867, the Waterford and Wexford railway company obtained power to make a railway from Waterford to Wexford, entering the town of Wexford by a somewhat circuitous route. By an Act of 1871, they took power to vary that route, and to construct a line of railway along our quay, on condition that they first made, to the satisfaction of our engineer, a quay and wharf, not less than ten feet wide, supported on wooden piling along the whole river front of the existing quay, upon which piled wharf a second line of railway was to be constructed, for use as a siding. Under the Act of 1871, the time limited for the construction of the railway and works authorised by the Acts of 1864 and 1867, was extended for three years. In 1874 an Act was passed providing that "the time extended by the Act of 1871 for constructing and completing the railways, authorised by the previous Acts of the company," should be further extended till August 1, 1876. Thus the Act of 1874 granted no extension of the time for works authorised by the Act of 1871, but only for works authorised by the previous Acts of 1864 and 1867. The time limited by the Act of 1871 for the works therein authorised is now expired. The bill, however, proposes to extend till December 1, 1878, the time for the construction of all the authorised works of the company, including those authorised by the Act of 1871. But so far as regards the works authorised in 1871, it is, in fact, a bill for reviving powers which have lapsed, including the powers to make the additional works upon our quay. Those works have not been commenced. We do not wish to prevent their construction, but we say that the additional quay and wharf, to be constructed by the company, would now be quite inadequate if limited to a width of 10 feet, and that it ought to be not less than 20 feet wide. When we agreed to the 10 feet, only a single line of railway was proposed. But, in Committee, the bill of 1871 was altered by the promoters, and provision was made for a second line to be laid upon the substituted quay, but we say we only consented on the understanding that the substituted quay should be increased proportionately in breadth. The space on the existing quay now available for trade purposes is only about 33 feet in breadth. The space required for two lines of railway would be, at least, 20 feet in breadth, and the quay and wharf to be substituted should be, at least, 20 feet, instead of half that width, as provided in the Act of 1871, and as would be again provided by the bill. If this were merely an extension of time bill it might be said that we were not at liberty to question what occurred in 1871, but though the bill does not use the word "revive," it is really a bill for the revival of powers; and that being so, every question is open to us *de novo*. It may be said that, if it be an extension of time bill, we might have objected to it on S. O., and have

thrown out the bill. That is quite true, but the fact that it has passed S. O. without our objecting to it cannot preclude us from being heard against it here. If it is a bill practically for authorising new works, for which no power exists at present, we must have the same rights of going into all questions affecting the expediency and justice of such works, as regards ourselves, as if it had been a new bill of which proper notice had been given. We are not to be placed in a worse position because it is a bill for authorising new works, with respect to which there has been no compliance with S. O.

Mr. RICKARDS: A petitioner is not bound to appear on S. O.

Shrubsole (Parliamentary agent for bill): No point that can be taken before the Examiner on S. O. can be taken elsewhere.

Aspinall: It is true we cannot ask in Committee that the bill should be rejected because the promoters have not complied with S. O., but that does not prevent our saying that it is a new bill; and we are entitled to oppose it just as though it had been an ordinary bill for new works which had fulfilled all the requirements of S. O. In the House of Lords, though we did not succeed on our main contention, the promoters took no objection to our *locus standi*. They now say we are not entitled to be heard, because in the House of Lords clauses 5, 6, and 7 were introduced into the bill as the result of discussion in which we took part. But though clauses 6 and 7 were submitted to us, and some alterations made in them, we did not accept them as in any way satisfactory to us. We only accepted them in connection with other clauses which were rejected. The Lords' Committee rejected the clause we submitted providing that the quay should be of the width of 20 feet, but it is not correct to say that clause 5 was substituted in its place, for clause 5, as proposed by us and as it now stands in the bill, relates to a different matter—the position of the two lines of rail. The Committee having given us one of our clauses and rejected the others, we did not discuss the matter further. The chairman, in conveying the decision of the Committee respecting our clauses, said it would be necessary for the promoters formally to prove the preamble. The Committee then adjourned, and afterwards the promoters sent us clauses, but we refused to appear. I contend that there is no binding rule which would prevent us from being heard upon the preamble even if we had discussed clauses in the House of Lords. In this case I do not know that it is material that we should be heard upon the preamble, because probably the question at issue may arise equally well upon clauses. As regards these, at all events, we have a right to be heard. The utmost extent to which any rule has gone is, that if you have appeared upon and discussed clauses—i.e., if, after the principle has been decided, you have interfered in the settlement of the wording of the clauses, then you will not be allowed to appear upon clauses in the second House of Parliament. (*Whitehaven, Cleator, and Egremont Railway Bill*, 1 Clifford and Rickards, 200; *Birmingham Water Bill*, 1870, 2 Clifford and Stephens, 92; *Isle of Wight, &c., Railway Bill*,

1871, *Ib.* 210.) There is more difficulty in drawing the line where discussion on preamble ends and discussion on clauses begins in the House of Lords than in the House of Commons, because in the House of Commons the preamble is decided before clauses are dealt with, while in the House of Lords, after the evidence on preamble has been given, the preamble is postponed, the clauses being discussed before the preamble is passed.

Mr. RICKARDS: Supposing the Committee go into clauses, you may assume that they intend to pass the preamble.

Aspinall: With this reservation—that something may be done upon clauses which may induce the Committee to take a different view upon the preamble.

The CHAIRMAN: Did the Committee pass the preamble after you had declined to appear upon clauses?

Aspinall: Yes. I now ask to object before the Committee to clauses 3, 4, and 5 of the bill, and to so much of the preamble as relates to those clauses.

Shrubsole (in reply): According to practice, when petitioners have discussed clauses in one House, they cannot be heard against the preamble in the other. If petitioners in one House had tried to get particular clauses but had been defeated, I do not say that they might not appeal to the other House; and assuming that there was anything in the preamble which would have to be altered or amended, owing to the adoption of such clauses in the second House, I do not say that that part of the preamble might not be altered. Here there is not a word in the preamble affecting the petitioners, but even if there had been they could not have been heard except as to the particular clause which they failed to insert in the House of Lords. As it is, they are content with clauses 6 and 7, which were accepted by them in the other House, and what they want is the clause, as to the increased width of the new quay, which the House of Lords rejected. They want to alter the Act of 1871, by making the new wharf twice as wide as the Act provides.

Aspinall: Clauses 6 and 7 were only accepted by us in this sense—as clauses to be inserted if we succeeded in our major contention.

Shrubsole: The very clauses which they say were not accepted were discussed by counsel.

Sir H. D. WOLFF: When did the petitioners withdraw from the discussion?

Aspinall: Immediately after the decision of the Committee.

Sir HARCOURT JOHNSTONE: You never expressed yourself as satisfied with the dimensions of the quay as specified in the Act of 1871?

Aspinall: No.

Mr. RICKARDS: The result is that you did not get what you went for?

Aspinall: No.

Shrubsole: If the petitioners are not precluded by the practice of Parliament from endeavouring to get, upon clauses in the House of Commons, what they failed to get from the Committee of the other House, the question then arises whether they have any substantial ground for appearing. I contend that they would

be really asking for that which no Committee could give them, for to alter a 10 feet into a 20 feet quay would necessitate the deposit of fresh plans and sections. As to the argument that the bill is a revival of lapsed powers, we say that by the Act of 1871 there is no limit of time for the exercise of powers *quoad* the line and works now in question, while the Act extended the time for the works previously authorised.

The CHAIRMAN: We are of opinion that the Act of 1871 limits the time for the works thereby authorised.

Shrubsole: In the House of Lords the petitioners said nothing about the extension of time.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Allowed* against clauses 3, 4, 5 and 6, and so much of the preamble as relates thereto.

Agents for Petitioners, *Grahames & Wardlaw*.

Agents for Bill, *Dyson & Co.*

WHITEHAVEN, CLEATOR, AND EGREMONT RAILWAY BILL.

Petition of (1) PROMOTERS of the CLEATOR and WORKINGTON JUNCTION RAILWAY BILL; (2) PROMOTERS of the CLEATOR and WORKINGTON JUNCTION RAILWAY BILL and OTHERS.

8th March, 1876. — (Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Duplication of Petitions—Appearance on more than one Petition—Right of Petitioning, Abuse of—Matter for House, not for Referees.

Against a bill for making a new line of railway, three petitions, containing substantially the same allegations, were presented (1) by Lord L. and other landowners; (2) by promoters of a bill for a rival line, among whom were Lord L. and several of the same landowners; and (3) by promoters of the same bill and inhabitants of the districts affected. The *locus standi* of petitioners (1) was not disputed, but as to the other petitioners it was contended that many of them had signed all three petitions; that they were adequately represented by the first; that the three petitions were really one petition; and that it was contrary to practice, and would be highly inconvenient, to hear the same parties upon more than one petition, all raising the same issues, and containing substantially the same allegations:

Held, that both sets of petitioners were entitled to appear.

(*Per Cur.*) If there is any abuse of the right of petitioning by unnecessary duplication of petitioners, it is a matter for the House and not for this Court.

The *locus standi* of petitioners (1) was objected to, because (1) certain of the petitioners, Lord Lonsdale and others [*named*] have presented another petition against the bill, alleging the same objections thereto, and the same reasons in favour of the Cleator and Workington junction railway bill in nearly the same words but with further details, and the promoters submit that it is not the practice of Parliament to hear the same parties on two petitions against the same bill containing substantially the same allegations; (2) certain of the petitioners [*names given*] are not named in the Cleator and Workington junction railway bill as promoters of the bill, and have no such interest therein as entitles them to be heard as such against the Whitehaven, Cleator, and Egremont railway bill; (3) the remaining petitioners [*names given*] being only three in number, and one-third of the promoters named in the Cleator and Workington junction railway bill, are not entitled to be heard separately from the other promoters alleging the same reasons in the petition of Lord Lonsdale and others; (4) the three several petitions entitled respectively (a) "The Petition of the Earl of Lonsdale and Others," (b) "The Petition of the Promoters of the Cleator and Workington Junction Railway Bill," and (c) "The Petition of the Promoters of the Cleator and Workington Junction Railway Bill and Inhabitants of the Districts affected by the Bills after-mentioned," are in fact only one petition, and the parties in the second and third petitions, if heard at all, ought not to be separately heard.

The *locus standi* of petitioners (2) was objected to, because (1) certain of the petitioners [*names given*] have already signed two other petitions against the bill alleging the same objections and urging the same reasons in support of the Cleator and Workington Junction Railway Bill; (2) the remaining petitioners, some 240 in number, state no objections to the bill not stated in the two other petitions mentioned, and do not adequately represent the district alleged to be affected, or show any interest affected by the bill, or, if any, no interest distinct from that of the persons who have signed the two other petitions; (3) this petition and the two other petitions [those of Lord Lonsdale and others, and the promoters of the Cleator, &c., railway] are in fact one, and the persons signing them ought not to be heard separately.

Shrubsole (Parliamentary agent for both sets of petitioners): Petitioners (1) are promoters of a rival bill, and there is no dispute as to their right to be heard on the ground of competition, and that they propose to take the same land as the land scheduled under the present bill. What is said is that having signed petition (1) we are

not to be heard on petition (2) which we have also signed. But the promoters here have no right to ask the Court to decide any such question. A man, at his own peril as to costs, may sign a dozen petitions if he chooses. The only issue for the Court is, have the petitioners, or have they not, a substantial right to oppose? It is objected that certain of the petitioners are not named in the Cleator and Workington Bill as promoters. But they are on the committee of management, and are promoters, though not named in the bill; we cannot be expected to put the names of all into the bill. There is no rule of practice preventing the same people from being heard on two petitions. (1 Clifford & Rickards 183.)

McIntyre, Q.C. (for promoters): The two petitions to which we object are precisely the same, and contain substantially what is stated in the petition of Lord Lonsdale and other landowners, to which we do not object. Most of the landowners signing that petition are promoters of this Cleator and Workington junction line. The Court will not allow a man to be heard upon a dozen petitions. Great inconvenience would otherwise be caused, *e.g.*, where there are three petitions representing the same interests and raising the same issues, counsel for two of these petitioners might walk out of the room after the Committee in this House had passed the preamble, leaving counsel for the third set of petitioners to get clauses, and then, having got clauses, substantially the same petitioners might renew the opposition on preamble in the House of Lords.

Mr. RICKARDS: Might it not be left to the Lords' Committee to defeat any such attempt?

McIntyre: But meanwhile the promoters would be harassed by the attempt being made.

Mr. RICKARDS: If there is any abuse by unnecessary duplication of petitions, it is a matter for this House and not for this Court.

The **CHAIRMAN**: The *locus standi* of the Petitioners is *Allowed* upon both petitions.

Agent for Bill, *Lewin*.

Agents for both Petitioners, *Dyson & Co.*

WILTS AND BERKS CANAL BILL.

Petition of SWINDON NEW TOWN LOCAL BOARD.

16th March, 1876.—(Before **Mr. RAIKES**, M.P., Chairman of Committees, in the Chair; **Mr. PEMBERTON**, M.P.; **Mr. BONHAM-CARTER**; and **Mr. RICKARDS**.)

Canal—Transfer of—Closing up of Branch—Agreement for Sale—Formation of New Company—To carry on Canal or otherwise—Local Board—District Traversed by Canal—Roads and Bridges—Rights Affecting—Disuser of Canal—Conditional Sale of Lands—Period of Hastened—Effect upon District—General or Limited *Locus*.

Where a bill proposed to confirm an agreement for the sale of a canal undertaking to an individual, through whom a company, constituted by the bill, was to be formed, ostensibly for the maintenance of the greater portion of the canal as a going concern (but, as was suggested, really with a view of terminating its existence), and the local board of the district traversed by the canal opposed upon the ground, first, that the time limited by the original Act for closing the canal and selling the lands, in the event of its disuse by the public, was reduced from 14 to 2 years; and, secondly, that the lands, when sold and in private hands, would form an obstacle to improvements in the town, the canal company being subject to statutory liabilities with regard to the maintenance and extension of bridges, &c., which would then be removed:

Held (notwithstanding that the several liabilities of the existing company were expressly transferred by the bill to the new company), that, having regard to the alteration in point of time, and the other circumstances of the case, the petitioners were entitled to a general, and not merely to a limited, *locus standi*.

The bill was one for incorporating the Wilts and Berks canal company, and for transferring to them the undertaking of the Wilts and Berks canal navigation, for authorising the closing of the Longcot branch, the sale of its site, and for other purposes. An agreement was scheduled to the bill between the proprietors of the navigation and **Mr. George Frederick Fox** for the sale of the canal to him, with power to **Mr. Fox** to form a company for carrying on the canal or otherwise, and the clauses of the bill accordingly provided for the re-sale of his interest to the company, and for the carrying on of the canal as a going undertaking, with a proviso, however, that if at the expiration of 2 years (instead of 14, as under the original Act), the canal ceased to be used for purposes of traffic, the land occupied by the canal, with its banks, &c., should be sold, a right of pre-emption being reserved to the original proprietors of those lands.

The petitioners, who were the local board of Swindon New Town, in the county of Wilts, having a present population of 12,000, and rapidly increasing, urged that their district was intersected in various directions by the Wilts and Berks canal and the Longcot branch; that no new street could be carried in almost any direction without meeting the canal somewhere; and hence that the future disposition of the canal and the lands belonging to it was a matter

of vital interest to the locality. The reduction of the period for a possible closing of the canal from 14 to 2 years would have the effect, they contended, of releasing the company during the intermediate 12 years from the obligation of maintaining existing bridges, and from giving facilities for any new bridges over the canal, and so would obstruct the natural growth of the town.

The *locus standi* of the petitioners was objected to, because (1) no existing rights, powers, &c., of theirs were interfered with or affected; (2) they had no right to object to the sale and transfer of the canal; (3) the bill did not interfere with the obligations existing to keep the canal and works in proper repair; (4) the modification from 14 years to 2 years made in sec. 162 of the Act 1st and 2nd George IV., c. 97, under which, if the canal for the specified period ceased to be used, the lands or grounds belonging to the company might be repurchased by the original owners was a matter affecting those landowners or their representatives, and not the petitioners; (5) the petitioners had not been unanimous in affixing their seal to the petition, and no meeting of the ratepayers had been called, to sanction the petition; (6) no sufficient right or interest was disclosed according to practice.

Pembroke Stephens (for petitioners): The junction within our district of the canal itself and the Longcot branch has the effect of tri-secting our territory, so that is by no means the ordinary case of a river or navigation passing through a town. The bill conceals the real object, for whilst professing to incorporate a company to keep open and work the canal, the scheduled agreement points to its speedy discontinuance and the ultimate sale of the property. Mr. Fox is to be "at liberty to introduce into such Act any clause or provision which he may think fit, which may be consistent with the object of carrying on the said canal, or of selling the same to any other person or persons for any purpose," and it is certainly suggestive that the name of Mr. Fox should appear, not only in the schedule, but on the back of the bill amongst the solicitors. So that Mr. Fox not only buys up the canal which traverses our streets, but he then comes here and objects to our *locus standi*. The present company are bound to keep the bridges and towing-paths, &c., in good repair, and further to maintain "such and so many convenient bridges, arches, culverts, passages, and roads over, under, or by the side of" the canal as any two justices shall "from time to time judge necessary and appoint for the use of the owners and occupiers of the lands, grounds, and hereditaments adjoining" the canal, "and of all persons who now have, or may hereafter have, a right of way over or through the lands or grounds used" for making the canal.

Bidder, Q.C. (for promoters): It is not suggested that we repeal that obligation.

Stephens: Not in terms, certainly; but the question is as to the effect of the bill as a whole. Supposing that the company erected insufficient bridges, the owners and occupiers might themselves, as matters stand, erect others, and charge the cost to the company. There is only one

way in which the company can be released from these obligations, and that is, if for 14 years the canal ceases to be used as such, they may sell the lands, remaining, however, subject, during those 14 years, to all existing liabilities. The bill ingeniously cuts down the 14 years to 2, so that if they can only keep out traffic for that time the land will be sold, and all the obligations gone. Already they have done their best in anticipation by letting the canal get choked and out of repair. As the sanitary and street authority, we have incurred considerable expense in laying out roads and carrying sewers and pipes across the canal, and the necessity for doing so will increase as the population increases. If the bill passes, and the land now belonging to the canal company is sold, there will be a belt of land traversing our district in all directions, discharged from statutory obligations, and in the hands of private owners, and we shall be obliged to purchase from them, in every case, the lands necessary for continuing streets or bridges across the canal, and the right of laying down pipes, &c. Besides, this new company may be only formed in name, it may be only Mr. Fox, or Mr. Fox's nominees, and we prefer the security of the existing company. Even though the existing obligations may be transferred by the bill, practically, the 2 years' clause will alter everything. This is, moreover, the creation of a new jurisdiction within our limits, keeping up part and relinquishing [part of the original undertaking. In the *Welland River* case (1 Clifford & Stephens 156) the local authority was heard against change of jurisdiction.

Bidder: The new company will be in the same position as the old. At the utmost you are only entitled to a hearing against the 2 years' clause.

Stephens: I ask the Court to remember how this canal divides our district, and not to take a narrow view of the issue. First, we are representatives of the local public, who should be heard with respect to proposals affecting an artery of traffic (*Corporation of Hastings*, 1 Clifford & Stephens 149); secondly, we are a street authority whose communications are vitally affected by the bill. (*Cheshire Lines Committee Bill*, 1874; *Petition of J. W. Fox*; 1 Clifford & Rickards, 62.)

Bidder (in reply): What can the petitioners want with more than a *locus standi* against a particular clause? The canal is a bankrupt concern of which in their own petition they say that it "has become choked up and is a receptacle for mud and filth of all descriptions, and the said canal is in its present condition a nuisance." The new company are saddled with this existing obligation, save as to the Longcot branch which is to be closed and the site sold. The petitioners have no real complaint to make of the bill, but want to amend the old Act. As to the single change which is made in point of time, that must surely be a benefit to the town, for if the canal is at present a nuisance the sooner that state of things is changed the better. The closing of the canal however does not depend upon us, but upon the public and the use which they make of it. The real

security of the petitioners is against the property of the company and not the company itself. They can go just as well before the justices and apply for new bridges after this Act is passed as they can now.

Mr. RICKARDS: Why do you change the 14 years into 2 years?

Bidder: The change will benefit the local board, as they say the canal is a nuisance.

Mr. RICKARDS: Is it on sanitary grounds you propose that alteration?

Bidder: No; it is part of the terms on which we purchase the canal. The new company are entering on a speculation; they may not be able to keep the canal going, and if not their only chance of getting back their outlay is by selling the lands. But there can be no good reason for keeping them out of their money for 14 years.

Mr. RICKARDS: Is there traffic upon the canal at present?

Bidder: There is a limited amount of traffic. This bill cannot be regarded as a transfer of jurisdiction in the ordinary sense. It is the mere transfer of an undertaking from one set of individuals to another; and the petitioners themselves complain of things as they are.

The CHAIRMAN (after deliberation): In this case we *Allow a general locus standi*.

Agent for Petitioners, *Gale*.

Petition of (2) The GREAT WESTERN RAILWAY COMPANY.*

Canal—Existing Power to Close if Disused—Proposed Acceleration of Time to Abandon—Sale of Canal to Individual—Transfer by him to New Company—Canal as Feeder of other Navigations—Railway Company owning Water System communicating with—Loss of Water passing from one Canal to another—Consequent injury to Navigation—Riparian Owners on Canal—Frontagers, Rights of, over Canal—Landowners, Right of, to Pre-Emption, on Abandonment of Canal.

A bill was promoted scheduling an agreement for the sale of a canal to an individual, who was to transfer it to a new company, and until such transfer the liabilities of the old company were continued. The bill took power to close a short branch of the canal at once, and also to close the main portion provided it was not used by the public for a period of 2 years; the adjoining landowners having a right of pre-emption upon such abandonment. There was a similar power in the existing Act, but the period of non-user therein named was 14 years. The

Great Western railway company petitioned against the bill on the ground that they would be injuriously affected by loss of traffic through the closing of the canal, which was a feeder of navigations belonging to them, and also by loss of the water which passed into their canal at each opening of the lock connecting the two systems. They further alleged that, as frontagers of the canal possessing rights under the pre-emption clause, they were entitled to appear against the proposed acceleration of the period for closing the canal. The promoters objected that the petitioners did not show any interchange of traffic between the canal and their own water system; and as to the acceleration of the period for pre-emption, that the petitioners as landowners were benefited by such a provision, and in any case could only be entitled to appear against the pre-emption clause:

Held, however, that the petitioners were entitled to a general *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their existing rights, interests, powers, privileges, or property will in no respect be interfered with or injuriously affected; (2) they have no right, title, or interest to object to the sale and transfer of the undertaking of the canal company; (3) the bill will not interfere with the supply of water to any other canal or navigation; on the contrary, sec. 34 provides "that the company shall at all times keep and maintain the canal and all the reservoirs, works, basins, docks, quays, slips, landing-places, and conveniences thereto belonging, in good working condition, and shall preserve the supplies of water to the same, so that the canal and all basins, docks, works, and conveniences thereto belonging, or connected therewith, may be at all times kept open and navigable for the use of all companies and persons desirous to use and navigate the same;" (4) the allegation that petitioners are owners and occupiers of lands and works having a frontage to the canal does not entitle them to be heard against the transfer, inasmuch as such lands and works will not be taken or interfered with under the bill; (5) the closing of the branch canal known as the Longcot branch (which is a short side branch, and not in any way part of the through communication) will not prejudice the petitioners, nor do they allege that they will be prejudiced thereby; (6) the petitioners allege that clause 54 of the bill for the modification of 1st and 2nd George IV., c. 97, s. 162, will prejudice them; but inasmuch as such modification affects only the original owners of the lands or grounds purchased or taken for the canal, or their heirs, successors, or assigns, and as no part of such lands then belonged to the peti-

* During the hearing of this case, Mr. FORSYTH, M.P., took the chair in the place of Mr. RAIKES.

tioners, or now belongs to them, they cannot be prejudiced by a provision that if the canal be not used for 2 years instead of waiting for 14 years, as provided by the said Act, such lands shall be re-conveyed to the original owners, or their heirs, successors, or assigns, in case they think proper to purchase such lands; and the petitioners have no right to be heard against clause 54; (7) they disclose no right or interest entitling them to be heard according to practice.

Saunders (for petitioners): The undertaking of the promoters extends from the Thames, near Abingdon, to our Kennet and Avon canal at Lemington lock, near Trowbridge, in Wilts, with branches to Chippenham and Calne, and it also communicates at Swindon with the North Wilts canal, which extends thence to the Thames and Severn canal at Weymouth Bridge, this last canal forming part of a line of water communication between the Thames and the Severn. The Kennet and Avon canal navigation forms a direct inland water communication between London and Bristol by means of the river Thames to Reading, and thence by the river Kennet navigation (now our property) to Newbury. The Kennet and Avon canal communicates with it at Newbury, and passes by the towns of Hungerford, Pewsey, Devizes, Trowbridge, and other places to Bath, and thence to Bristol by the river Avon navigation in which we possess 31 of the 32 shares into which the proprietorship is divided. The Wilts and Berks canal is also, by means of the Thames between Abingdon and Oxford, in communication with the Oxford canal, which passes through the counties of Oxford and Warwick, and communicates with the system of canals extending through Warwickshire and Staffordshire. Thus the Wilts and Berks canal is an important link in the chain of inland water communication of the country, and certainly should not be allowed to pass out of the hands of the canal company into those of a private individual or a new company, which may never be able to raise any capital. The agreement scheduled to the bill provides for the sale of the undertaking to Mr. Fox for £13,466, and although the bill incorporates a new company there is no security that any such company will be established. The bill is objectionable on this ground, and we further say that there is a very considerable trade carried on between our Kennet and Avon canal at Lemington and the Wilts and Berks canal. For example, the number of boats which passed to and from the canals in the six months ending January 31, 1875, was 990, and we receive tolls in respect of the user of our canal by these boats. Our canal is also supplied with water to a considerable extent from the Wilts and Berks canal, as each boat which passes through Lemington lock gives us a lock full of water from the Wilts and Berks. It is most important to us that no part of our present supply of water should be taken from us, because otherwise in dry seasons we could not convey the traffic. Besides our claim to be heard as owners of navigation which will be injuriously affected by the closing of a feeder, we also claim to be heard as frontagers to this canal. We are in fact riparian owners on the canal at our Swindon station. And although we are not freighters,

our timber is brought to us on this canal by those who are freighters.

The CHAIRMAN: Do you contend that, as owners having a frontage to an artificial formation like a canal, you are in the same footing as riparian owners on a natural stream?

Saunders: I should not rest my case on the same footing as that of a riparian owner upon a river, but we are frontagers to this canal and entitled to use it.

The CHAIRMAN: You are only entitled to use this canal in the same way as any one of the public.

Saunders: Our works at Swindon were so constructed that we might avail ourselves of the canal. We say that under the bill the canal will pass into the hands of a private individual; that there is no security for the formation of any company to take it over, and still less security that any capital will be forthcoming; and that thus we shall be deprived of the revenue we now receive from the traffic passing between this canal and our own system of navigation, and shall also lose a supply of water which may put a stop to the whole trade upon certain portions of our canal. The promoters object that by sec. 31, they provide for the maintenance of the canal in good working order, but they omit to quote other words in the clause—"except as hereinafter otherwise provided."

Bidder, Q.C. (for promoters): That only refers to the shutting up of the Longcot branch.

Saunders: It may also refer to clause 54, which says that the canal may be shut up if disused for 2 instead of for 14 years, as in the old Act. Apart from this contingency, we have, as landowners, a special interest in the bill in respect of the right of pre-emption when the canal is converted into land, and we submit that we are entitled to be heard against any alteration of our legal position.

Bidder: The bill does not take that right away: it only accelerates the time for your exercise of it.

Saunders: The promoters also object that this modification only affects original owners and their heirs or assigns. But we are the assigns of the original owners.

Bidder: You may take it that you stand in the place of the original owners.

Saunders: As to the pre-emption, it is a statutory right secured to us, and we are entitled to be heard against any attempt to alter the terms of it.

The CHAIRMAN: Though the alteration may be in your favour?

Saunders: We do not admit that it is in our favour. We prefer having the canal.

The CHAIRMAN: As adjoining owners, with the right of pre-emption, is not your position rather improved than otherwise, inasmuch as your right accrues earlier?

Saunders: That assumes that our possession of the land is the best thing for us.

The CHAIRMAN: It may not be better for your general interest, but as assigns of the original proprietors your situation would seem to be improved.

Saunders: It antedates our right to come into possession of the land, which may be said to be

a benefit, but we say we would rather have the old clause. It all proceeds upon the assumption that accelerating the period for exercising the right of pre-emption is an advantage.

The CHAIRMAN: *Quoad* the pre-emption it must be an advantage.

Saunders: Yes; if you regard us simply as landowners adjoining the canal. But even then the clause might be altered to our prejudice in the Committee, and we should have a right to be heard upon that clause if it in the slightest degree affected the rights of the landowners. The shutting up of the Longcot branch would give us a right to be heard. Supposing Mr. Fox cannot form a company, there are no obligations upon him to maintain the canal. Clause 34 says, "the company shall keep and maintain the canal," but it does not bind Mr. Fox to maintain it, though he may be bound to transfer the canal to the company if it is ever formed.

Bidder: The old company is not dissolved till the transfer is executed from it to the old company. This cannot be done till the new company has been formed, and till that event happens the petitioners have all their remedies against the old company.

Saunders: The bill confirms an agreement for sale to Mr. Fox, and if the proposed company is not formed, the sale to him would still subsist.

Bidder: The company has not only been formed, but has petitioned Parliament in favour of the bill.

Saunders: We are so much interested in the other canals of the district, actually communicating with this canal, that we are entitled to be heard. (*Bradford Canal Bill*, 2 Clifford & Stephens 179.) This is a stronger case because there the canal to be closed was an end link, while this is a middle link.

Bidder.(in reply): It is not alleged that the petitioners carry a single ounce of goods on the

canal, or interchange goods with this canal. They only say that boats (not their boats) pass from the one canal to the other. Then as owners of land adjoining the canal they have no peculiar rights. They really have no more rights than the rest of the public, and they do not allege that it is of importance to them to have the use of the canal in connection with their works.

Mr. RICKARDS: They allege that they are owners of the canal which communicates with this canal.

Bidder: There is nothing in the bill to hurt them in that respect. As to the possibility that the new company may not be formed, if there is any failure or breakdown, the obligations of the old company remain. If, therefore, the bill becomes law, the petitioners are not prejudiced. Not one obligation is changed, except the closing of the Longcot branch, and they do not suggest that its closing will in any way prejudice them.

The CHAIRMAN: You take power to close the canal after 2 years' disuser instead of after 14 years.

Bidder: If this provision affects them, it would only entitle the petitioners to appear against the clause. It is simply a clause alteration, and has nothing to do with the principle. We have no power to disuse the canal. As long as people choose to use it, we are bound to keep it open. The only effect, therefore, of the alteration is that a filthy ditch will be required to exist for 2 years instead of for 14 years. We are going to try and make this canal pay as a canal; but, if it ceases to be used, it will do no good to anybody to preserve it for 14 years as an offensive ditch, while we are kept out of our money for 14 instead of 2 years.

The CHAIRMAN (after deliberation): We Allow the Petitioners a general *locus standi*.

Agent for Petitioners, *Mains*.

Agents for Bill, *Martin & Leslie*.

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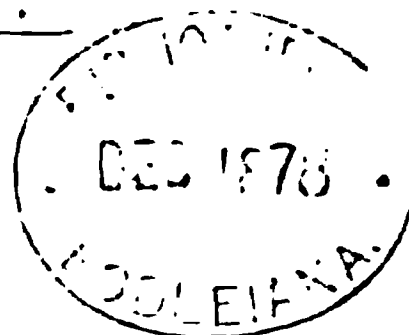
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EXPLANATION.

THE REPORTS OF THE COURT OF COMMON PLEAS, MADE BY THE COURT OF COMMONS, IN THE COURSE OF THE SESSIONS 1872-73, AND 1873-74, ARE HEREIN CLIPPED & PUBLISHED IN A SUPPLEMENT TO THE REPORTS OF CLIFFORD & STEPHENS.

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TEMPLE, February, 1881.

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P R E F A C E .

THE Reports now issued comprise CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Session 1877, and form Part I., Vol. II., of the new Series of *Locus Standi* Reports by CLIFFORD & RICKARDS, in continuation of the Reports of CLIFFORD & STEPHENS.

The Cases follow in alphabetical order, and an Index of Subjects has been prepared. Some typographical changes will also, it is hoped, make the Volume now commenced more convenient for reference, and more legible than its predecessors.

Vols. I. and II., of "Clifford & Stephens," and Vol. I. of "Clifford & Rickards," with the present Part, contain a Record of the Decisions of the Court of Referees for the last eleven years, from the Session of 1867 to that of 1877 inclusive.

TEMPLE, February, 1878.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1877.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1878.

ASHTON-UNDER-LYNE GAS BILL.

Petition of the STALEYBRIDGE GAS COMPANY.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Companies—Additional Capital—Competition—Existing Powers of Promoters and Petitioners over same District—No Alteration in Status.

By an Act of 1847 the promoters had taken powers for the supply of a district with gas, but had never exercised these powers. In 1855 the petitioners obtained similar powers for the supply of the same district, which they were actually now lighting with gas, and for that purpose they had expended a considerable capital. The bill did not seek to change the area of supply, but authorised the raising of further capital, by means of which the petitioners apprehended that the promoters would be enabled to carry out the powers of the Act of 1847, for the supply of the district common to both, and would thus come into competition with themselves. They therefore petitioned to be heard, in order to obtain the insertion of a clause excluding the promoters from supplying gas within the limits of the common district:

Held, that inasmuch as the bill took no fresh powers over the district in question, and contained no reference to this district, the mere apprehension of competition there, to be carried on under existing statutory authority by means of the additional capital contemplated by the bill, afforded no ground for a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the promoters obtained their powers to light Mossley with gas in 1847, and the petitioners obtained their powers of lighting Mossley with gas in 1855, and made their expenditure notwithstanding the existence of the promoters' powers; (2) the apprehension that the promoters will employ the extra capital empowered to be raised by the bill in lighting Mossley in competition with the petitioners gives them no right to be heard; (3) they intimate an intention to ask for a clause to repeal the powers of the promoters to light Mossley, but they cannot be heard upon the subject of powers granted in 1847 which are not dealt with by the bill; (4) they allege no interest entitling them to be heard.

Shrubsole, Parliamentary Agent (for petitioners): The bill provides for acquiring further lands and raising fresh capital. The promoters obtained powers to supply Mossley with gas in 1847, but they have never exercised these powers; we obtained our Act in 1855, and have laid out £40,000 in supplying Mossley, and are supplying it at the present time. If the promoters obtain new capital, they will enter into competition with us for lighting Mossley, which

at present they do not attempt to do, and we ask for the insertion of a clause to exclude them from this district, which we have all along supplied.

Mr. RICKARDS: This bill contains nothing about Mossley, or any fresh definition of limits in that district.

Shrubsole: No; but if the promoters are empowered to raise new capital, they may be able to come into Mossley and compete with us there.

The CHAIRMAN: We need not hear counsel for the promoters. We must *Disallow* the *locus standi*.

Agents for Bill, Dyson & Co.

Agent for Petitioners, Shrubsole.

BRISTOL UNITED GAS BILL.

Petition of JOSEPH ROACH and OTHERS.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Footpath, Diversion of—Access to Property Interfered with—Route rendered more Circuitous—Land not touched or taken, Locus Standi given where—Injurious Affecting—Road Authority not Opposing Bill—Representation of Owners, by—Highways Act, 5 & 6 Will. IV., cap. 50—Appeal to Quarter Sessions—Right of, Interfered with.

The promoters sought power, *inter alia*, to divert a footpath, upon which the petitioners' property abutted, although not at the actual point of diversion. The footpath, it was alleged, formed an important means of communication between the petitioners' premises and neighbouring places, to which the substituted path would be more circuitous. The petitioners further complained that the bill would authorise that which might have been done under the existing law by an application to Quarter Sessions under the Highways Act, in which case the petitioners would have been entitled to appear and oppose the granting of such powers; and that thus if passed the bill would preclude them from exercising their ordinary legal rights. For the promoters

it was answered that the petitioners were represented by the local board, who approved of the bill; that the bill was necessary in order to obtain compulsory powers for the purchase of certain additional land; and that as none of the petitioners' land was taken, they could not be heard on the ground of a mere injurious affecting:

Held, however, that the case did not fall within the general rule that an injurious affecting, apart from actual touching or taking of land, confers no right to be heard; and that inasmuch as the bill deprived the petitioners of an existing legal right to oppose the diversion of the footpath at Quarter Sessions, they were entitled to a *locus standi* against the same proposal in Parliament.

The *locus standi* of the petitioners was objected to, because (1) no part of the footpath where it is proposed to be diverted crosses over, and no lands proposed to be taken for the diversion thereof adjoin, any lands belonging to any of the petitioners; (2 and 3) it is not true, as alleged, that the footpath is of material importance in giving access to Stapleton and other places in the neighbourhood, or that the district would be injuriously affected by its diversion, and the route to Stapleton made more circuitous; (4) a portion of that part of the footpath which is proposed to be diverted, and especially the portion nearest to the brickfields of three of the petitioners, is frequently flooded for days together by the overflow of the river Frome, and rendered for a long time afterwards quite impassable from the mud and slush left behind; (5) the proposed diversion will give a good and properly constructed path, instead of the present unformed path, and will confer a benefit on all the adjoining owners and the public; (6) as regards the residences of many of the petitioners, the public road is the proper and shortest route to Stapleton, and as regards the residences of other petitioners, the diversion will actually shorten their route; (7) no land or property belonging to any of the petitioners is taken or interfered with; (8) the petitioners have no special rights or interests in any portion of the footpath, either where it is proposed to be diverted or elsewhere, other than those of the public at large, who are represented by the local authorities; (9) the said authorities have seen and approved the plans for the diversion, and do not oppose the bill, which is necessary

in order to obtain compulsory powers of purchase.

O'Hara (for petitioners): The bill contains power to stop up and appropriate the site of a footpath. If the promoters had proceeded to do this by an application to the Justices at Quarter Sessions, we should have been heard to oppose the application (5 & 6 Will. IV. 50, ss. 85-88). This bill is intended to take the place of that application, and we ought to be heard against it.

Michael (for promoters): We have not proceeded under the Highways Act, because there is some little additional land to be taken by compulsory purchase.

O'Hara: It is conceded we are inhabitants of the district, and we own property abutting upon a portion of the footpath proposed to be diverted, and near to, though not actually at the point of diversion. (*Lancashire and Yorkshire (New Works) Bill*, 2 Clifford and Stephens 172).

Michael: The local authority in whom the road is vested are the proper persons to be heard.

The CHAIRMAN: I am not aware that the Act enabling the local authority to be surveyors of highways takes away from the ratepayers or occupiers the right of appeal to Quarter Sessions.

Mr. RICKARDS: Almost the sole object of the bill seems to be to enable the promoters to do what they could have done by law.

Michael (in reply): The whole principle at issue here was decided in the *Clyde Navigation Bill*. (Petition of owners of Stobcross, 1 Clifford and Stephens 39).

Mr. RICKARDS: There was an agreement there.

Michael: This is merely a diversion, and not the same as the stopping-up of a road, and the petitioners must show injury.

The CHAIRMAN: They say, "the course of the footpath will be rendered circuitous and its length increased," and that it is of material importance to them.

Mr. RICKARDS: It is clearly a case in which they would have been heard at Quarter Sessions; but by the course you take in bringing in the bill their mouths will be stopped.

Michael: The case comes under the general rule that injurious affecting is not sufficient to give a *locus standi*.

The CHAIRMAN: It depends on the sort of injurious affecting. In the case cited by Mr. O'Hara mere injurious affecting was sufficient. We *Allow* the *locus standi* of the Petitioners.

Agents for Bill, *Baxter & Co.*

Agent for Petitioners, *Rees.*

CORNWALL MINERALS RAILWAY BILL.

Petition of VISCOUNT FALMOUTH.

23rd July, 1877.—(Before Sir HARCOURT JOHNSTONE, M.P., in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies — Working Agreement — Option of Lease — Earlier Act — Not repealed — Landowner — Having Statutory rights — Not mentioned in Bill — Right of, to Saving Clause — Draft certificate of Board of Trade — Stopped by House of Lords — Tolls — Traffic facilities — Effect of words "or otherwise" — Preliminary Agreement — Saving Clauses — Jurisdiction as to — Of Court, and of Select Committees.

A bill confirming an agreement under which the C. M. company was to be worked for 999 years by the G. W. company, was opposed by a landowner, who feared that in consequence of the transfer special rates and facilities enjoyed by him under section 27 of the C. M. Act of 1873, might be terminated. The bill did not repeal the Act of 1873, or make any mention of the landowner or his property, but the conditions of working in the hands of the G. W. company differed from those in section 27 of the Act of 1873:

Held that the petitioner was entitled to a *locus standi*, though his object avowedly was, not to strike out any part of the bill, but to add a saving clause for his own protection.

The form of a saving clause (assuming one to be necessary, and the parties are unable to agree) is for the Committee on the bill, and not for the Court of Referees to determine.

(*Per Cur.*) The words, "as to tolls, or otherwise," in a petition, are sufficiently large to include traffic facilities.

The bill was one "for conferring further powers on the company, and authorising arrangements between them and the Great Western company." The agreement with the Great Western company was for the working of the line by that company for a period of 999 years, upon terms contained in the scheduled agree-

ment, with an option to the Cornwall Minerals company of substituting a lease for the agreement. Lord Falmouth, whose property the line traversed for several miles, and who had given much of this land in consideration of special rates and traffic facilities, without compensation in money, feared that if the line were now transferred in the absence of provisions binding the Great Western company, his position would be altered for the worse; and petitioned accordingly.

The *locus standi* of the petitioner was objected to, because (1) the petition had been framed under a misapprehension, no alteration of the authorised tolls being made or proposed by the bill; (2) save as to tolls, no specific objection was made by the petitioner, and the complaint that under the bill his position would be altered for the worse was too general and vague to confer a *locus*; (3) the petitioner neither had nor alleged any sufficient interest, according to practice.

Pembroke Stephens (for petitioner): This is not an amalgamation, but it is the first step towards it; and this, accordingly, is the time for bringing forward and preserving any rights of the petitioner.

Mr. RICKARDS: Did Lord Falmouth petition in the House of Lords?

Stephens: No. The agreement between the companies only bears date the 30th April last, so that it must have been scheduled since the bill was in the other House. I admit that there was a general power in the bill, as deposited, to make agreements; but the agreement actually made we now see for the first time. Our former experience satisfies us of the necessity for clear and definite protection in the bill itself. The petition states that at, or shortly before, the formation of the company, arrangements were entered into with the petitioner, giving to the company considerable advantages and facilities in constructing their undertaking. Owing, however, to the shape in which they submitted their proposals to Parliament, the petitioner, for the protection of his estate and interests, was compelled in the same session of 1873 to oppose no less than two bills and a draft certificate of the Board of Trade. These fragmentary portions of one scheme, including the draft certificate, which otherwise would have become law by mere effluxion of time, were by a special resolution of the House of Lords, dated 17th March, 1873, referred to a Select Committee, and by them consolidated into one bill, which was afterwards passed into law as "The Cornwall Minerals Railway Act, 1873." Among other alterations or additions made at the instance of the petitioner, section 27 was inserted in the Act of

1873, this section being in addition to the agreements or arrangements otherwise subsisting between the company and himself. The bill is so framed as apparently to leave untouched the position of Lord Falmouth, but a comparison of the provisions in section 27 of the former Act, with the contents of the agreement scheduled to the bill, shows that with respect to tolls, the providing of waggons, the number of trains, and other matters, the bill, if passed in its present shape, will injuriously affect Lord Falmouth, his tenants, grantees, and licensees. We have no hostility to the company itself, or to the transfer, which may be beneficial; but as regards our own interests, we seek to maintain the *status quo*. To that extent we are no doubt seeking, as we did successfully in 1873, to add something to the bill, which it does not now contain, but which is indispensable for our protection. The decision of the Court in the *Cefn Acrefair and Rhosymedre* case (2 Clifford and Stephens 102) would be precisely in point, if it were not that the Committee on the bill meet to-morrow. We are accordingly obliged to ask for a *locus standi* to oppose the bill itself.

Clerk, Q.C. (for promoters): The petition is very general in its terms, and the petitioner can only be heard, if at all, on the question of tolls. No reference whatever is made to traffic facilities, for instance, on which a good deal of stress has been laid in argument.

Sir JOHN DUCKWORTH: The petition says that "of the provisions of the bill, some (as to tolls or otherwise) . . . are in direct conflict with the Act of 1873." Surely the words "or otherwise" are wide enough?

Clerk: They are the only words on which the petitioner can fall back. But what we say is that there is nothing in the bill of which the petitioner has any right to complain. He, or his property, is not mentioned or referred to in it from beginning to end; and section 27, on which he relies in the Act of 1873, is not repealed. The bill merely sanctions arrangements which have been made between the two railway companies, and defines the terms on which the future working is to take place. Whatever rights Lord Falmouth now has against the Cornwall Minerals company, he will continue to possess. And we contend that the provisions of the bill, making the necessary allowance for the change of circumstances, do not go further than the Act of 1873, and are not inconsistent with it.

Mr. RICKARDS: What Mr. Stephens says is, that, admitting the silence of the bill, one company nevertheless is going out, and the other is coming in, upon conditions which are defined in the schedule, differing in various ways from the Act of 1873. The former Act may not be in

terms repealed, but still is not the petitioner affected?

Clerk: The petitioner is not satisfied with preserving, he wants to better his position by going back on earlier transactions. We are willing to insert a clause saving the rights of Lord Falmouth under the Act of 1873; but we decline to go further, and make any reference to the terms of a preliminary agreement, which, though alluded to, was not confirmed by the Act of 1873.

Stephens: The effect of confirming one and not the other would be to create a presumption against the validity of the agreement of 1872, the existence of which is not denied. (To THE COURT): I am willing to accept any form of saving clause that will preserve all my rights intact.

(Copies of the saving clauses proposed on either side having been read and discussed)—

Mr. RICKARDS: We think there ought to be some saving clause inserted, and that the parties should, if possible, agree. If not, the Court must only consider in what form the *locus standi* should be granted, inasmuch as the bill does not contain any saving clause at present. Probably, if there had been a clause saving the rights of Lord Falmouth generally, and without any special mention of the agreement of 1872, of which we have heard but little in argument, we should not have been disposed to interfere.

Clerk: We are willing to save to Lord Falmouth all his rights under the Act of 1873, but not to enter on a discussion of the earlier agreement of 1872.

Stephens: The form of the offer made on the other side shows that there is something of ours which it is intended not to save.

The CHAIRMAN: We cannot undertake to settle clauses. If the parties can come to an agreement before the meeting of the Committee, well and good; if not, there must be a general *locus standi*.

Locus standi Allowed.

Agents for Bill, Toogood & Ball.

Agents for Petitioner, Milne, Riddle & Mellor.

. On the 24th of July, before the Committee upon the bill, *Clerk*, Q.C. (for promoters), in the course of his opening statement, was proceeding to read from the shorthand writer's notes the report of the proceedings before the Referees, with a view of limiting the opponent's case and arguments to the difference between the rival clauses which had then been under consideration. He was, however, interrupted by the Chairman (Mr. Julian Goldsmid) who held that it was for the Referees to decide

upon the *locus standi* of petitioners, but not in any way as to clauses, that province belonging exclusively to the Committee. Anything therefore which might have passed before the Court of Referees as to clauses, could not be referred to.

DERBY CORPORATION (EXTENSION OF BOROUGH, &c.) BILL.

Petition of the JUSTICES OF THE PEACE FOR THE COUNTY OF DERBY.

14th March, 1877.—(Before *Mr. BRISTOWE*, M.P., Chairman; *Sir HENRY DRUMMOND-WOLFF*, M.P.; *Sir JOHN DUCKWORTH*; and *Mr. RICKARDS*.)

Practice—Representation—Magistrates, General Meeting of, at Quarter Sessions—Delegation of Powers by—Committee Appointed to Oppose Bill—Quorum not Fixed—No Allegation that Signatories Represent Committee—Or whole Body of Justices—Magistrates not on Committee Signing Petition—Chairman's Authority to Petition—Great Eastern Railway Case (2 Clifford and Stephens 14).

The petition, which bore eight signatures, claimed to be that of certain Derbyshire magistrates "on behalf of themselves and others." At Quarter Sessions a resolution had been passed appointing a committee of 13 justices to consider the bill, with power to petition Parliament against it at the cost of the county rate. It appeared that the committee had met, and without any division of opinion, passed a resolution to oppose the bill; but this fact was not stated in the petition, which was only signed by the chairman and 5 other members of the committee, and there was no allegation that these justices signed either as representatives of the committee or of the magistrates as a body. The petition was also signed by some magistrates not on the committee. A similar case in which the *locus standi* of petitioners was refused having been cited on behalf of the promoters:

Held, that, as the magistrates signing the petition were not alleged to have done so in any representative capacity, and there

was nothing to distinguish their signatures from those of individuals, they were not entitled to be heard.

The petition was headed "the humble petition of the undersigned on behalf of themselves and others, being justices of the peace acting in and for the county of Derby." A committee of 13 justices had been appointed at Quarter Sessions to consider the bill, with authority to oppose it in Parliament. The petition was signed by the chairman of this committee, by five other members of the committee, and by three other magistrates; but there was no allegation that they signed on behalf of this committee, or of the whole body of justices.

The *locus standi* of the petitioners was objected to, because (1) they do not allege that they are, nor are they in fact, authorised to petition against the said bill by any order of the Court of Quarter Sessions of the county of Derby, or by any meeting of the justices of that county; (2) they are, or claim to be, justices for the county of Derby, the whole number of whom is 180 and upwards, and therefore they are a very small proportion of the whole number, whom they do not allege that they are authorised to represent; (3) the petition did not emanate from, nor was it signed at, any meeting of the justices of the peace for Derbyshire, or from any Court of Quarter Sessions for that county; (4) the petition does not purport to be, nor is it in fact signed by, or on behalf of, a majority of the members of any committee of justices duly appointed in that behalf, and it is in other respects informally and insufficiently signed; (5 and 6) nor does it allege any sufficient grounds for entitling the petitioners, whose property and rights are not interfered with, to be heard; (7) if entitled to be heard at all, it can only be against clause 13 of the bill.

Shrubsole, Parliamentary Agent (for petitioners): The object of the bill, as far as it concerns the justices, is an extension of the borough limit. Clause 13 of the bill specially affects us.

Mr. RICKARDS: The objection to your *locus standi* appears to be directed to the point that the petition is not properly signed.

Michael (for promoters): That is the only question. I say that the petitioners only sign as individuals.

Shrubsole: As the Magistrates at Quarter Sessions only sit four times a-year, on these occasions they appoint committees to carry on any special business. There was a resolution dated "January Sessions, 1877, Derbyshire," appointing "Colonel James Cavendish and others as a committee to consider the effect

of the bill upon the interests of the county, with full power to petition Parliament against the passing of the bill or any of its clauses; and for that purpose to employ such agent and counsel, and incur such other expenses at the cost of the county rate as they should think necessary, and to take all necessary proceedings for the purpose of carrying out the resolution of the court."

Michael: I quite admit that the resolution referred to was duly arrived at by the Court of Quarter Sessions, and that five of the committee referred to sign this petition, but not in a representative capacity.

Shrubsole: I can also show that a petition was approved of at a meeting of the committee.

Michael: The petition does not allege that.

Shrubsole: It is not necessary to allege it, if it can be proved that the petitioners are parties representing the committee, and that they were deputed by the Court to oppose the bill.

Sir H. D. WOLFF: How many constitute a quorum?

Shrubsole: There is no direction as to that; nor am I aware of any general S.O. of the Quarter Sessions fixing the quorum of committees generally.

Sir H. D. WOLFF: Why do additional magistrates who are not members of the committee sign the petition?

Shrubsole: Merely to mark their disapproval of the bill. Mr. Rodgers, whose signature is first attached to the petition, was chairman of the committee, and the following was the resolution passed by the committee:—"Derby County Hall, Feb. 9th: At a meeting of the Borough Boundary Extension committee, present Mr. Rodgers, &c." (here follow five other names) "the draft of the petition to the House of Commons against the Borough Boundaries Extension bill was read, and alterations in it approved, the 8th clause expunged, engrossment of the petition completed, and the petition engrossed and signed." The petition there referred to is this petition.

The CHAIRMAN: Although the chairman's name is attached to the petition, some of the other five members are omitted.

Shrubsole: Because they left while the petition was being engrossed. It was the act of them all, and the chairman's signature alone is sufficient. Nine was the greatest number of members ever present at any meeting of the committee, and the petition is signed by five of its members, so that it is signed by a majority of the greatest number of members ever present at a meeting.

Michael (in reply): The *locus standi* of the petitioners, if allowed, should be confined to clause 13 of the bill, which is the only one

affecting them. But they are not entitled to be heard at all. They merely state that they are magistrates, and as such their petition is merely that of eight individuals who happen to be magistrates, of whom there are in all 180 in the county. Eight cannot be taken to represent so large a total number; nor is there any statement in the petition to that effect, and, therefore, the 172 must be taken to be in favour of the bill. The case of the *Great Eastern Railway* (2 Clifford & Stephens 14), is on all fours with this. Moreover, I contend that the resolution of the Court of Quarter Sessions, empowering the committee to consider and oppose the bill, is *ultra vires*. The proper course was for the committee to report to the Court and for the Court then to petition.

The CHAIRMAN (after deliberation): The Referees are of opinion that the *locus standi* must be *Disallowed*, in accordance with the cited case.

After this decision, the Justices lodged another petition, signed in proper form; and on application to the S.O. Committee, leave was given to enter an appearance upon the amended petition, though deposited too late. The case now came on for hearing upon merits.

9th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Extension of Borough Boundaries—County area, part of, included within Municipal Borough—County Magistrates, Interference with Jurisdiction of—County and Police Rates, Exemption of added area from—Diminished value of Rates as Mortgage Security—Coroner, Election of—Disfranchisement of Freeholders—County Interests—Justices of Peace as representatives of—Interference with Road.

Practice—General Allegations, Insufficiency of—Petition to be read as a whole.

This bill was one for extending the boundaries of Derby, and for that purpose it proposed (by clause 13) to take a portion of the area now within the jurisdiction of the county magistrates and add it to the borough. The promoters were willing to concede a hearing to the petitioners limited to a clause in the bill exempting lands, houses, &c., within the extended area from the county rates to which they were now subject. The petitioners, however, claimed a general *locus*

on the additional ground (taken *arguendo*) (1) of interference with county jurisdiction; (2) as representing the interests of certain freeholders, who by transfer from the county to the borough would be deprived of their right of voting at the election of a county coroner; and (3) as representing county interests generally. The petition itself was silent on these points, but alleged, generally, that the petitioners were "injuriously affected by the bill, and objected thereto;" that "so much of the preamble as affirms the expediency of the proposed addition to the borough is unfounded, and cannot be substantiated by evidence;" and that there were several clauses and provisions in the bill prejudicially affecting the rights and interests of the county. It was objected that the petitioners could not under these general allegations oppose the whole bill, including borrowing powers and various proposed internal arrangements exclusively affecting the borough:

Held, that the petitioners were the proper persons to protect the interests of the county, and that as the petition must be read as a whole, they were entitled to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) the extension of the boundaries of the borough of Derby, which is the object of the bill, does not, of itself, affect their rights, property, or interests; (2 and 3) their petition shows that their interest is confined to clause 13 of the bill, and if entitled to be heard at all, it can only be against clause 13, and not the preamble or other clauses; (4) no sufficient grounds are alleged to entitle them to a general hearing.

Venables, Q.C. (for petitioners): The amended petition on which I now appear is not objected to, as the previous one was, on the ground that it is not properly signed, and the objectors substantially concede our right to be heard as against clause 13, which exempts all lands, houses, and hereditaments, within the added area, from the county rates, and will therefore diminish the value of the rates as security for money already raised by mortgage upon them for public purposes. The clause will also have the effect of imposing a large additional tax upon other

property in the county, which will still be liable to those rates. But we further claim a general *locus* against the bill. The whole purport and substance of the Act is to take a piece of the county area and add it to the borough. Within this portion of the county area the county justices have at present exclusive jurisdiction. If we had proposed a bill to take part of the borough and add it to the county, the *locus standi* of the corporation would not have been disputed. Conversely in the present case we have a right to be heard. We refer specifically to clause 13 as injurious, and we also say "your petitioners are injuriously affected by the bill, and object thereto." We further allege that "the passing of the bill will have an injurious effect upon the interests of the county;" and again, "that so much of the preamble as affirms the expediency of the proposed addition to the borough of Derby is unfounded and cannot be substantiated by evidence, and there are several clauses and provisions in the bill prejudicially affecting the rights and interests of your petitioners, and no provisions are contained in the bill for their protection." The absence of more specific allegations against other parts of the bill than clause 13 may possibly affect the arguments and the evidence which we shall be able to adduce before the committee, but it can in no degree affect our right to a general *locus standi*. The fact of our specifying particularly our objection to clause 13 of the bill, cannot affect our right to be heard against the bill generally, which we object to in general terms. A road authority have a general *locus* against a bill interfering with their road, if they take a general objection to the road being touched at all, and the same principle holds good in this case of proposed encroachment upon our jurisdiction. We, as the local governing body, are the proper parties to be heard against such an interference with our authority.

Mr. RICKARDS: In your view, the justices of the county are for all purposes the proper representatives of county interests?

Venables: And they are the proper representatives of their own jurisdiction, which is sufficient for my purpose. Supposing the justices to be of opinion that, within the area proposed to be added to the borough, justice would be very badly administered by the borough magistrates, and that the county police and chief constable were better than the borough police, the justices are the proper persons to represent this to Parliament.

Mr. RICKARDS: So far as the bill affects the jurisdiction of the county justices, or their present officers, your argument has great force; but a great part of the bill appears only to

affect the internal affairs of the corporation—the division of the borough into wards and similar matters.

Venables: We might probably say nothing about the division of the borough into wards, but that division, and other arrangements contemplated by the bill, cannot take place till the corporation have appropriated some of our territory.

Mr. RICKARDS: Then there is the power to borrow.

Venables: We should have a good deal to say as to that.

The CHAIRMAN: You are the only body having authority to levy county and police rates in the area proposed to be annexed to the borough?

Venables: Yes; or to see to the peace and good order of that area. Among other provisions, the bill disfranchises there the freeholders who elect the coroner, and supersedes him by a borough officer. We represent the interests of those freeholders.

The CHAIRMAN: And the county officers would be superseded by borough officials?

Venables: Yes.

Cooper, Parliamentary Agent (for promoters): The bill would probably affect the rights of the county justices to some extent, but their interest is small and well defined. It is confined to clause 13, and does not entitle them to rove over the whole bill. The general statements of the petition are too vague, and should have been preceded by proper complaints of the specific provisions of the bill to which the petitioners object. There is no definite case here that we can meet.

The CHAIRMAN: It is not necessary to traverse every recital in the preamble. The petitioners allege that they were appointed as a committee "to consider the effect of the bill upon the interests of the county." The petition must be read as a whole.

Cooper: Surely if the petitioners intended to object to portions of the bill other than clause 13, these portions should have been specially alleged. Otherwise, one does not know what case petitioners are going to set up.

The CHAIRMAN: Though the other allegations are general, there is enough to show that they apply to the various recitals in the preamble of the bill as deposited when the committee of justices was appointed to consider the general effect of the bill. The Court Allow a general *locus standi* to the Petitioners.

Agent for Bill, Cooper.

Agents for Petitioners, Dyson & Co.

DUKINFIELD AND DENTON LOCAL BOARDS OF HEALTH BILL.

Petition of CONSUMERS OF GAS, &c., in DUKINFIELD.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas—Transfer of Undertaking of Company to Local Boards—Ratepayers and Consumers—Representation of Ratepayers by Promoters—Petition not duly Signed—Incorporated Companies' Seal of, not Attached—Petitioners a Class, not mere Individuals—Gas Consumers, Right of, to be Heard.

The bill was one empowering the local boards for the districts of Dukinfield and Denton to make and supply gas, and giving them statutory authority to carry into effect an agreement with the Dukinfield Gas company for the joint purchase of the company's undertaking. The petitioners signed as ratepayers and gas consumers, and consisted of companies, firms, and private persons. It was objected and ruled that as ratepayers they were represented by the local boards who promoted the bill. Their right to be heard as consumers was controverted, on the ground that (1) those of them who were companies had not affixed their corporate seal to the petition (but this objection was over-ruled on the authority of cases cited), and (2) that the petitioners were not sufficient in number, or consumers of a sufficiently large proportion of the gas manufactured by the company to represent a class:

Held, however, that the petitioners were a sufficiently important body to entitle them to a hearing as gas consumers, although they were excluded as ratepayers on the ground of representation.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs are taken or injuriously affected by the bill; (2) the persons, firms, or companies who sign the petition do not in fact represent the gas consumers or ratepayers of Dukinfield; (3) it is not alleged nor is

it the fact that any public meeting of the consumers or ratepayers of Dukinfield has been called to authorise a petition against the bill; (4) their interests are not such as to entitle them to be heard according to practice; (5) any arrangement made between the Dukinfield gas company and any of the petitioners for a reduction of the price of gas is voluntary, and not made in pursuance of any statutory obligation on the company; (6) all existing contracts and agreements between the said gas company and any gas consumers are by the bill made binding on the promoters; (7) clause 42 of the bill fixes a maximum price for gas, and this maximum is the same as that fixed by the Company's Act; (8) the incorporated companies who have signed the petition, have not fixed their corporate seal to the petition, nor does it appear that the names of the companies have been appended by any person having the authority of the company to do so; (9) the bill is promoted by the local board under their common seal, and has been approved by a meeting duly convened of the owners and ratepayers of the districts, and therefore the petitioners cannot be heard against it as ratepayers; (10) the petition discloses no ground conferring a right of being heard according to practice.

Clerk, Q.C. (for petitioners): Although as ratepayers the petitioners may not be entitled to a hearing against their local boards, they are certainly entitled to be heard as gas consumers.

Pope, Q.C. (for promoters): The only question upon which I shall ask my friend to satisfy the Court, is whether the petitioners represent the gas consumers as a class, or petition as mere private individuals.

Clerk: On that point I shall refer to the *Birmingham and Staffordshire Gas Bill, Petition of Owners and Consumers in Smethwick, &c.* (1 Clifford & Rickards 134). The petitioners are a large proportion of the consumers, and consume about one-eighth of all the gas manufactured. With regard to the manner in which the petition is signed, the same point was raised in the *Ashton-under-Lyne Water Bill* (2 Clifford & Stephens 50). Here everyone of the signatures is by the managing director with the authority of the company. In the *Uppingham Water Bill* (1 Clifford & Rickards 272), the petition of the board of guardians was not under seal.

Pope (in reply): If your instructions are that the managing directors sign with the express authority of the company, I waive that point; and if the Court are of opinion that 2,500,000 cubic feet, out of 32,000,000 cubic feet, is such a substantial consumption as makes the petitioners representatives of a class, I will not oppose the *locus standi* of the petitioners as consumers.

The *locus standi* of such of them as are merely ratepayers must, however, be disallowed.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*, except of such of them as are consumers of gas.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Sherwood & Co.*

EPSOM AND EWELL GAS BILL.

Petition of (1) J. E. WALTERS and OTHERS; (2) H. R. PRICE and OTHERS.

18th April, 1877.—(Before Sir HARCOURT JOHNSTONE, M P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—Dissolution and re-incorporation of—Representation—Consumers—Petition of Committee appointed by—Public meeting—Memorial—General powers of Petitioners—Authority to oppose Bill—No specific allegation of—Representation of Class interests—Rural Sanitary Authority not Petitioning—Practice—Statements of fact, arguendo, outside petition, against practice—Contrà as to description of petitioners, &c.

The bill was one for dissolving and re-incorporating an existing gas company, for raising fresh capital, and for other purposes; and the petitioners in both cases claimed to be heard as a committee appointed by and representing the gas consumers of their respective districts. A memorial signed by 57 out of 109 consumers in Ewell had, some time previously, been addressed to the company complaining of the present gas supply, and, at a meeting of the persons signing this memorial, held before the bill was promoted, petitioners (1) had been respectively appointed a general committee to protect the interests of the Ewell consumers. The promoters objected that this was a general authority not empowering the petitioners to oppose the present bill in Parliament, and the petition did not allege that such opposition was in fact authorised or contemplated by the meeting. The petitioners alleged that in previous negotiations they had been treated by the company as representing the general

interests of consumers, and they maintained that the powers delegated to them were sufficient to cover a petition against the bill. Petitioners (2) had also been appointed at a meeting of consumers, and with reference to the bill. In addition to their claim to be heard as committees, both sets of petitioners asserted their right, from their number and the amount of gas consumed by them, to represent the interests of consumers generally, more especially as the local authorities did not appear. The promoters objected to any attempt to supplement the petition by a description of the position of the petitioners as individual consumers:

The Court, however, over-ruled this objection, and allowed a *locus standi* to both bodies of petitioners.

The *locus standi* of (1) J. E. Walters and others was objected to, because (1) no lands, &c., of any of them are taken or interfered with; (2) they are not consumers of gas supplied by the promoters, and have no interest in their undertaking; (3) such of them (if any) as are consumers are only individual consumers, and the grounds alleged in the petition are not applicable to individual cases, but are general, and could apply only to persons entitled to represent class interests; (4) they have no sufficient interest, and do not allege any special grounds entitling them to be heard; (5) the petition did not emanate from, nor was it signed at, any public meeting of gas consumers, inhabitants, or ratepayers, convened in opposition to the bill; (6) the petition is signed by ten persons only, and does not allege that the signatures were attached by order of any meeting of the committee of gas consumers referred to in the petition or otherwise, or that it was signed by the petitioners on behalf of, or with the authority of, any such committee, and therefore it can, according to practice, only be treated as the petition of ten private individuals; (7) even if all the petitioners were consumers of gas (which is denied) within the company's proposed limits of supply, they form but a small fraction of the gas consumers within such limits, and do not profess to represent the consumers as a class; (8) they are within the limits of the rural sanitary authority of Epsom, and are represented by, and only entitled to be heard through, that authority; (9) their petition discloses no ground for a hearing, according to practice.

The *locus standi* of (2) H. Rokeby Price and

others was objected to on similar grounds; but the objections specially alleged, that it appeared upon the face of the petition that the committee of gas consumers referred to in it was not appointed at any meeting held either in opposition or in any way in relation to the bill. The petition in this case was signed by 9 persons.

Saunders (for petitioners 1 and 2): I will first take the petition of J. E. Walters and others. It alleges that in November, 1875, a memorial, signed by the principal gas consumers in Ewell, was addressed to the company, complaining of various matters connected with the gas as supplied by them. A meeting of the signatories to the memorial was afterwards held in January, 1876, at which resolutions were passed to the effect that the company ought to erect additional works to enable them to supply gas of better quality and in greater quantity, and that steps ought to be taken by the company for its reconstruction under Parliamentary powers, with ordinary provisions for the protection of the public; and the present petitioners, with others, were appointed a committee to carry the objects of the memorialists into effect. The petitioners are men of property and influence, and even if they signed in their individual capacity, they might be taken to represent the feeling of the gas consumers of Ewell. They are the whole committee appointed to treat with the company, with the exception of three members; they are, with one exception, gas consumers; and their appointment was the result of the meeting in January, 1876, which was attended by 57 out of 100 gas consumers in Ewell. From that time this committee has acted for the gas consumers, and has been recognised in that capacity by the company themselves. As far as a public meeting is concerned, it has been decided that for purposes of *locus standi* it is not necessary. (*Pontypool Gas and Water Bill*, 1 Clifford & Rickards 51; *Dukinfield and Denton Local Boards Bill*, *supra*, 9.)

Mr. RICKARDS: There is no doubt about that.

Saunders: Even if not authorised to act as a committee, the petitioners include the two principal landowners of the district, and must on account of their position and importance, be regarded in a representative capacity. Although the petition does not allege that the petitioners signed the petition by the order of a meeting of the committee, it was as a matter of fact so signed, the committee being summoned to meet for that purpose.

Michael (for promoters): You cannot add that to the petition. I dispute the fact, and you cannot adduce evidence to prove what is not stated in your petition.

Saunders: As to the petitioners being represented by the sanitary authority, consumers are heard as well as the local authority. (*Alliance and Dublin Consumers Gas Bill*, 2 Clifford & Stephens 176; *South London Gas Bill*, *Ib.* 218; *Harrow Gas Bill*, 1 Clifford & Rickards 29.) As to the petition of Mr. Rokeby Price and others, they are the committee, appointed at a later date than the Ewell committee, to protect the interests of the Epsom gas consumers, and are themselves gas consumers. They were appointed as a committee in May last year to ascertain the position and prospects of the gas consumers, and to consider what steps ought to be taken to protect their interests; and although they were not originally appointed with reference to this particular bill, they represent the general interests of the consumers. One of our allegations is that a memorial to the Epsom Board of Health has been numerously signed by the ratepayers, and was addressed to that Board in February last, urging them to protect the interests of the gas consumers; but it was then too late to apply to the Local Government Board in our behalf.

Michael objected to statements of fact outside the petitions.

The CHAIRMAN: It is not competent for you to go into the reasons why the Epsom Board has not petitioned. You must not go beyond your own petition.

Saunders: The petitioners are all men of position.

Michael: You cannot go into that question either.

The CHAIRMAN: Yes; that is usually allowed.

Saunders: One of them is churchwarden, and the others are not small consumers, but such influential persons as would naturally be appointed a committee to represent the general consumers.

Michael (for promoters): My whole objection is as to the representative capacity of the petitioners. Admitting the Ewell committee were appointed to represent the consumers before this bill was thought of, as the fact is, that does not give them a representative capacity to oppose the bill. Nine gentlemen sign one petition, and ten the other, and this gives nineteen out of a constituency of gas consumers comprising 544 in all. In the *Dorking Gas Bill* (2 Clifford & Stephens 196) 44 petitioners were refused a *locus standi*; in the *Sutton Gas Bill* (1 Clifford & Rickards 267), 40 inhabitants of Banstead were also refused a *locus standi*; and in the present case the petitioners are quite insufficient for representative purposes. The petitioners, moreover, were not appointed to oppose this or any other bill or for all purposes,

but only to present certain memorials with respect to the supply of gas. To entitle them to be heard they should have been appointed at a public meeting for the special purpose of opposing the bill.

The CHAIRMAN: The Court are of opinion that the *locus standi* should be *Allowed* in both cases.

Agent for Petitioners, J. H. Scott.

Petition of (3) the SUTTON GAS COMPANY.

*Gas—Extension of existing limits of supply—
Invasion of Petitioners' district—Competition
—Limited locus.*

The bill, besides the re-incorporation of the existing gas company, proposed by clause 4 an extension of limits which would include the parish of B., which the petitioners were already authorised by their Acts to supply. A general *locus standi* was claimed on the ground of competition. It was urged on behalf of the promoters that the competition arising out of the bill would be of too unsubstantial a nature seriously to affect the interests of the petitioners:

Held, however, that although the petitioners could not claim a general *locus standi*, they were entitled to be heard against clause 4 of the bill which defined the limits of supply.

The *locus standi* of the Sutton gas company was objected to, because (1) they have not sufficient interest in the price of gas to be charged by the promoters in Banstead to entitle them to be heard against clause 48 of the bill; (2) inasmuch as by clause 48 it is proposed to enable the promoters to charge a higher price for gas in Banstead than the petitioners are by their Act authorised to charge, such power will not prejudicially affect the petitioners, who cannot be heard against the part of the bill relating to the price of gas; (3) the competition referred to in the petition does not entitle the petitioners to be heard against clause 48; (4) if entitled to be heard at all, they can only be heard against clause 4 of the bill.

Hooker, Parliamentary Agent (for petitioners): Our Act of 1876, incorporated us as a company with powers (*inter alia*) to supply Banstead with gas. Our petition alleges that by the bill the promoters seek to invade the special district

assigned under our Act to us, although we are able and willing to supply that district. We claim a general *locus standi* against the bill. The following among other cases are on all fours with this: *Aberdare and Aberaman Gas Bill* (1 Clifford & Stephens 111); *Farnworth and Kearsley Gas Bill* (Ib. 112); *Widnes Gas, &c., Bill* (Ib. 9, 116); *King's Lynn Consumers Gas Bill* (2 Clifford & Stephens 2); *Aberdare Gas Bill* (Ib. 23).

Michael (for promoters): The petitioners have no such substantial interest as entitles them to be heard on the ground of competition. They are supplying no gas in Banstead, nor are they compelled to do so by their own Acts or the Gas Acts, and they have no mains laid down there.

Mr. RICKARDS: They are authorised to supply gas to Banstead, and you propose to compete with them.

Michael: It is for the Court to decide whether the competition is of such a substantial character as entitles them to be heard. As a matter of fact, as our objections allege, the 48th clause fixes a higher maximum price for gas in Banstead than the petitioners are authorised to charge, and, therefore, any chance of real competition there is very small.

The CHAIRMAN: Still you take power by clause 4 to enter Banstead, which is within their district, and therefore you will be able to compete with them there. The Court *Disallow* a general *locus standi*, but *Allow* it against clause 4 of the bill, and so much of the preamble as relates thereto.

Agents for Petitioners, Wyatt, Hoskins, & Hooker.

Agent for Bill, Cooper.

GLASGOW AND IBROX TRAMWAY BILL.

Petition of CORPORATION AND BOARD OF POLICE OF GLASGOW and GLASGOW TRAMWAY AND OMNIBUS CO. (LIMITED).

7th May, 1877.—(Before Mr. PEMBERTON, M.P. Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Tramways, Private and Municipal—Outside Municipal Boundary—Power of Third Company to make Agreements with Corporation—Lessors—Interference with Rights of Corporation, by—Interchange of Traffic, Permissive Powers for—Gas and Water Pipes, Interference with, by Tramways—Practice—Saving Clause offered by Promoters—Form of Decision by Court to secure Insertion of.

The corporation of Glasgow had exercised a statutory option to construct tramways inside and beyond the municipal boundary, and had leased these tramways to a private company, providing in the lease for fares and traffic arrangements in the interests of the inhabitants. A bill was now promoted by a private company for the construction of new tramways wholly beyond the city boundary, and by clause 39 permissive powers were sought to enter into arrangements with the corporation lessees for through booking and traffic facilities. On a joint petition presented by the corporation and their lessees, it was contended by the former that their rights and property, as well as the interests of the public, would suffer if the proposed arrangements were entered into, and that these could not be carried into practical effect unless by a physical junction with tramways which the petitioners had made or had an option of taking. Ultimately—after argument—the promoters offered a provision securing the rights of the corporation in respect of their tramways within the municipal boundary, and conceded the right of the petitioners to be heard in respect of apprehended interference with gas and water pipes :

Held, that the petitioners were entitled to a *locus* against the works clause, and clause 39, authorising traffic arrangements, as a security that the proposed protective clause would be inserted in the bill.

The bill was one "to authorise the construction of tramways from Glasgow and Ibrox, and for other purposes;" and by clause 39 the committee, on the one hand, and the Glasgow tramway and omnibus company (limited), and the Vale of Clyde tramway company, or either of them, on the other hand, were authorised to enter into "contracts or arrangements for facilitating the interchange and transmission of traffic from, to, or over the intended tramways, the Glasgow corporation tramways and the tramways of the Vale of Clyde tramways company, respectively, and for securing through cars, and for through booking, and invoicing, &c." In the year 1870, the corporation had obtained a statutory option to construct tramways not only within the city, but for some distance outside,

and this option had been exercised. Again, in 1871 and 1875 the corporation obtained statutory powers, among other purposes, to acquire from the Vale of Clyde tramways company the tramways distinguished as No. 16 and No. 16a, which were authorised by the Clyde Company's Act of that year, and which extended beyond the municipal boundary. The corporation had granted leases to the Glasgow tramway and omnibus company (limited) of some of the lines of tramway which they were authorised to construct or acquire under these Acts. They now alleged that they had made under the lease very favourable arrangements in the interests of the public, as regards fares and accommodation, and that if any other company were authorised to construct tramways as now proposed, and to interfere with these existing arrangements, the public would suffer great inconvenience, and the property, rights, and interests of the corporation would be injured. Further, they alleged that no such interchange of traffic as was proposed could take place without using some portion of the petitioners' tramways.

The *locus standi* of the petitioners was objected to, because (1) the proposed tramways are wholly situate beyond the municipal boundary of Glasgow, and are not to any extent, or for any purpose, within the jurisdiction of the corporation or the board of police; (2) the Glasgow tramway and omnibus company do not allege, nor is it the fact, that the tramways, if authorised, will compete with the tramways and omnibuses of the petitioners; (3) no property or interest of any of the petitioners will be taken or interfered with; (4) the corporation and board of police do not allege that the position of any of their tramways will be altered under the bill, nor is it the fact that they will be so altered; (5) the corporation are not entitled to be heard upon their allegation with respect to the water-mains and pipes, mentioned in their petition, inasmuch as the petition is not presented by the commissioners acting under the Glasgow Corporation Water Act, 1855, who are the owners of the said mains and pipes, and are a separate legal corporation, who have not, in fact, authorised the petition; (6) the corporation are not entitled to be heard upon their allegation with respect to apprehended interference with water and gas mains by the proposed tramways, inasmuch as they do not allege that such mains will be injuriously affected, and they are, in fact, amply protected by parts II. and III. of the Tramways Act, 1870, incorporated in the bill; in any event the *locus standi* should be limited to such interference, if any; (7) the power in clause 39 to make arrangements and agreements with the Glasgow tramway and omnibus

company and others, is simply permissive, and is not such as to confer upon any of the petitioners a right of hearing; (8) the company have no intention of acquiring the Vale of Clyde tramways 16 and 16a, nor have the Vale of Clyde tramways company any intention of selling those tramways to the corporation; (9) none of the petitioners have shown any ground for a hearing according to practice.

Clerk, Q.C. (for petitioners): We claim a *locus standi* first on the ground of interference with gas and water pipes belonging to the corporation, and secondly on the ground of the authority taken under clause 39 to make agreements with our lessees and others.

Pope, Q.C. (for promoters): We concede to the petitioners a *locus standi* with respect to interference with gas and water pipes.

Clerk: We admit what is stated in the first objection—that no part of the tramways proposed to be made lie within the city boundary. But we own, under statutory authority, tramways outside the municipal boundary, and we complain that the agreements and arrangements authorised by the bill may seriously prejudice our interests and those of the public.

The CHAIRMAN: Those powers are permissive?

Clerk: Yes.

Pope: There is no junction between the proposed tramway and the tramway belonging to the corporation.

Clerk: They join with 16 and 16a, which, under the Glasgow Corporation Tramway Act, 1875, we have the power of taking into our own hands.

Pope: No; there is no junction with the Vale of Clyde tramways which the corporation have any power to acquire.

Mr. RICKARDS: Does this bill confer upon the promoters any power to pass over the line of the Vale of Clyde tramways?

Pope: It only authorises an agreement for facilities.

Clerk: There is no express power given to them to run over our tramways, but from the way the tramways are laid, it will be impossible for the promoters practically to work their line without running on to a portion of the existing lines of the corporation. We contend that clause 39 will in effect over-ride the rights and powers of the corporation in respect of their tramways.

Pope: The promoters will insert a provision to the effect that the powers of agreement sought in clause 39, shall not be so used as to interfere with the rights of the corporation to, and their control of, the city of Glasgow tramways within the municipal boundary.

Mr. RICKARDS: In point of form, as a security

that such words will be inserted, we had better give a *locus standi* against clause 39 and against clause 5 (power to make tramways), in respect of protection to gas and water pipes.

Locus standi Allowed against clauses 5 and 39, and so much of the preamble as relates thereto.

Agents for Bill, *Martin & Leslie.*

Agents for Petitioners, *Simson, Wakeford & Simson.*

GREAT WESTERN RAILWAY BILL.

19th March, 1877.—(Before Sir JOHN ST. AUBYN, M.P., in the chair; Sir HENRY DRUMMOND WOLFF, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) Messrs. CHURCH, HOOPER, and CHURCH.

Railway—Omnibus Bill—Compulsory purchase of Land—Special Covenants as to land between vendors and third parties—Right of third parties to oppose Bill as Landowners—Easement—Right of re-entry on Land—Remedy by Injunction—Land injuriously affected—Lands Clauses Act, sec. 68—Double locus standi in respect of same land.

A sold to B land forming part of a building estate, and stipulated that B should not build upon it houses below a certain class, or carry on offensive trades there, or permit any act or thing which might be detrimental to the rest of the property. B also covenanted to make and maintain a certain road, with rights of way to A and his tenants, reserving also right of re-entry to A, his heirs, and assigns, in case of default. A railway company now promoted an omnibus bill containing power to take compulsorily from B the land in question. A petitioned as a landowner, alleging that, though there was no privity between himself and the railway company, the special covenants entitled him to a landowner's *locus standi* against the bill, inasmuch as, upon the transfer of the land to the company, he would not be able to enforce against them specific performance of the covenants entered into by B. He also alleged that the

right of re-entry reserved to him in the conveyance for the purpose of making or maintaining the road was in itself such an easement as entitled him to a hearing. The promoters objected that if the special covenants between A and B were broken by the company after the land was transferred to them, A's remedy would be by injunction or by compensation, obtained under sec. 68 of the Lands Clauses Act :

Held, that without going into the question of the alleged easement, the special covenants alone gave A a *locus standi*, since under the bill and the incorporated Acts, the railway company would receive statutory authority to erect on the land buildings for railway purposes (such as engine-sheds, &c.) which would be in contravention of the covenants, thus depriving A of the rights for which he had stipulated with B.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken, and it distinctly appears in the petition that they have sold the 70 acres of land, in respect of which the compulsory powers of which they complain are sought; (2) they have no such interest in these 70 acres of land or in any part thereof as entitles them to be heard; (3) the various protective clauses referred to in the petition are in no way affected or altered in the bill; (4) the rights and interests of the petitioners under the several covenants set forth with respect to the road or otherwise are not such as entitle them to be heard; (5) no ground is alleged upon which the petitioners can be heard according to practice.

Round (for petitioners) : This is an omnibus bill and the preamble recites that it is expedient that the Great Western railway company should be empowered to acquire additional lands. Accordingly, by clause 17, the company are authorised to take compulsorily certain lands, houses, and buildings adjoining their railway, including 70 acres, which until lately formed part of a valuable building estate near Acton, of which the petitioners are trustees. On various occasions we have had contests with the Great Western railway company, when they have endeavoured to obtain compulsory powers over this estate, and on each of these occasions the petitioners have obtained clauses in the company's Acts prohibiting the company from building coke ovens or buildings which might become

a nuisance to the property as a building estate. In selling the 70 acres some time back the petitioners insisted that the purchasers should enter into stringent covenants for effecting the same object, and we are here now to insure that that object shall not be defeated by the railway company under the bill. At first sight the petition looks like one by A. against B.'s land being taken, but in fact we have retained such an interest in the land we have sold as entitles us to a landowner's *locus standi*. The covenants entered into with us by the purchasers of the 70 acres were, 1st, to permit no obnoxious manufacture or business upon the premises, or anything which "shall be or might become a nuisance or annoyance to the neighbourhood, or detrimental to the adjoining or neighbouring property of the same vendors." Then there are restrictions upon the kind of houses to be erected upon the estate; and the purchasers undertake before November 30, 1877, to make and maintain a road (shown on the plan) 40 feet wide, from the bridge over the North and South Western Junction railway, to the bridge under the Great Western railway, with a perpetual right of way to the vendors and their tenants. The petitioners also preserve a right of re-entry, to make the road in case of default. This right alone entitles us to a *locus standi*. It is of vital importance to our interests that the stipulations as to the construction of the road should be specifically performed and that our right of way should be preserved in its integrity. The construction of this road, in fact, entered largely into the consideration of the price paid by the purchasers. We are advised that if these compulsory powers are granted to the company we shall be deprived of the right we now possess to enforce specific performance of the covenants entered into by the purchasers, especially that relating to the construction of the road, and that, unless restrained by special provisions, the company will be able to acquire the land free from these covenants upon paying us a money compensation. It may be said as to our right of re-entry, that we merely have a license to use the land. A license, if it is by deed, operates distinctly as a grant of an easement. Here there has clearly been such a grant, and there are all the ingredients which make up an easement, and so give us a *locus standi*. (*Bradford Water Bill*, petition of Mr. Ferrand, 1 Clifford and Stephens 41; *Hindley Local Board Bill*, *Ib.*, Vol. II., 229; *Clyde Navigation Bill*, petition of landowners of Stobcross, *Ib.*, Vol. I., 89; *Burntisland Direct Mineral Railway Bill*, 1 Clifford & Rickards 207.) The last cited case shows that there may be two *locus standis* in respect of the same lands.

Sir H. D. Wolff: You must show that the bill will liberate the land from the covenants attaching to it.

Round: It is difficult to see how the covenants can be enforced. There is no privity between us and the railway company. One jury, therefore, would have to decide, as between the company and the present owners of the land, what the company should pay for breach of the covenant; and another jury would have to decide the same question when we came to sue the present owners for the same breach. There is another difficulty, namely, that the present owners may plead, "We are relieved from the covenants in the conveyance, because an Act of Parliament has authorised the Great Western to take this land, and has thus put it out of our power to fulfil the covenants. That being so, we are not liable to damages."

Sir H. D. Wolff: Do not the covenants run with the land?

Round: It does not follow that under the circumstances these covenants would run with the land; but the difficulty is that the railway company would be dealing not with us, but with the purchasers from us. Suppose we say that damages will not satisfy us; we want the road itself.

Sir H. D. Wolff: Could you not proceed in Chancery?

Round: We do not want to be forced into the Court of Chancery, and if we did we should be met with the answer I have already suggested. I do not know by what machinery we could get compensation under section 68 of the Railways Clauses Act.

Saunders (for promoters): The petitioners' right is no greater because they happened to be owners of the land last year, than it would be if they had never been owners of the land, but had a mere right-of-way over it, as owners of adjoining land. This is not, therefore, a land-owner's petition. No doubt under the conveyance the petitioners obtained personal rights against the purchasers, and also obtained a right-of-way over this land. But this is not an easement which carries with it a right to be heard. A right of common is not a parallel case, because it is an easement, and something more; it is an interest in the land. The S.O. require no notices to be given to owners of easements, showing the distinction made by Parliament between owners, lessees, and occupiers, and a man whose interest in land is merely in the nature of an easement. In towns, for instance, there are numberless persons possessing easements over property proposed to be taken compulsorily, but notices are not given to them.

Mr. Rickards: The question here is not

limited to the right-of-way. There are various restrictions and limitations upon the use of this land; and what you have to address yourself to is the question of the effect which this compulsory purchase by a third party may have upon land sold subject to certain limitations on the user of such land.

Saunders: The result would be that under section 68 of the Lands Clauses Act all these interests would be the subject of compensation.

Mr. Rickards: Supposing the Great Western railway, after purchasing the land, built houses upon it contrary to the covenant that only houses of a certain class should be built there. What would be the remedy of the petitioners?

Saunders: The land could only be taken for the purpose of the railway; and if the company did build houses they would be subject to the covenants.

Mr. Rickards: Suppose the company in carrying on their business permitted any obnoxious or offensive manufacture, "or any other act, matter, or thing, which shall be, or might become a nuisance or annoyance to the neighbourhood, or detrimental to the adjoining or neighbouring property of the said vendors." The railway company might do some act which, as the petitioners might fairly contend, would be detrimental to their property. Against such an act have not the petitioners a right to protection?

Saunders: Their protection would be a right of action against the company, or compensation under the Lands Clauses Act. In this case, if what was done was done under Parliamentary powers, the petitioners would be compensated under the Lands Clauses Act.

Sir H. D. Wolff: At present the petitioners can prevent the purchasers from building any houses under a certain size. Could they prevent the railway company from doing so if this bill passes?

Saunders: Not if the railway company are doing something which they are authorised to do under statute. If the railway company were not so authorised, the petitioners' remedy would be by injunction.

Sir H. D. Wolff: Suppose, for instance, the railway company built an engine-shed.

Saunders: That would be a railway purpose, for which the company would have statutory authority. In that case the petitioners would obtain compensation under the Lands Clauses Act on the ground that their property was injuriously affected; but it does not follow that because a person is entitled to compensation, he therefore has a right to be heard in Parliament.

Mr. Rickards: A. stipulates with B. that B. shall not do something on the land he purchases

from A. In this way A. has imposed a much greater restriction upon the acts of B. than the law puts on the acts of a railway company. Is A., or is he not, deprived of the benefit of these covenants in the event of the land being compulsorily taken from B. by the railway company?

Saunders: These are peculiar rights, and relate principally to the building of small houses and the carrying on of offensive trades. With respect to everyone of these stipulations, if the thing were not authorised by the Company's Act, the petitioners would have exactly the same rights against the company which they have against the purchaser, and might go to Chancery for an injunction. By acquiring this land we do not tear up the contract between the petitioners and the purchasers from them. The land is bought subject to the contract, except so far as it is varied by the bill deposited or the Acts incorporated therewith.

Sir H. D. WOLFF: Are cottages for railway workmen railway purposes, which would be authorised by your Act?

Saunders: Yes.

Sir H. D. WOLFF: But they would be houses of a character prohibited in the covenants.

Saunders: Yes; but the petitioners might recover compensation, under the general Act, on the ground that their land was injuriously affected having regard to the covenants. I pass now to the easement claimed by the petitioners.

The CHAIRMAN: Without going into the question of the right of way easement, we think that the petitioners have a right to be heard on the ground of the special covenants.

Locus standi Allowed.

Agents for Petitioners, *Meld, Roscoe & Co.*

Petition of (2) SOUTH STAFFORDSHIRE WATERWORKS COMPANY.

Railway Bill—Interference with Water Pipes—By Level Crossing—User of Road by Water Company—And Railway Company—Respective Rights of, in Public Roadway.

A railway company proposed to cross by a level crossing a road which was within the limits of supply of a waterworks company, but under which no pipes were at the time laid. The water company petitioned, alleging that special provisions should be inserted in the bill protecting them in their right

to use the road for the purpose of their undertaking:

Held, that the petitioners were not entitled to a *locus standi*, and must be left to the protection of the general law regulating the use of the roadway.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs will be taken, nor will their works or undertaking be so interfered with as to entitle them to a hearing; (2) if the promoters are authorised by the bill in any way to interfere with the works or property of the petitioners, the latter are not entitled to a general *locus* as landowners; (3 and 4) the powers vested in the petitioners do not entitle them to be heard in support of any of the clauses and provisions which they suggest; (5) no ground is alleged upon which they can be heard according to practice.

Shrubsole, Parliamentary Agent (for petitioners): Power is taken under the bill to cross on a level certain roads under which we have a statutory right of laying down pipes. The railway company now for the first time seek an easement over these public roads, and we say that the authority for which they ask should only be exercised subject to certain provisions for our protection.

Mr. RICKARDS: Will you not, if the bill passes, enjoy the same rights which you have now? I do not understand how the right given to a railway company to lay down its rails over a public road, can affect the rights of a water company to lay its pipes under the road.

Shrubsole: That may or may not be determined to be the law if we are driven to litigation; but the simplest way to prevent our being molested by this level crossing, is by allowing us to go to the Committee and ask for protective clauses. The case of a road crossed on a level by a railway company is a *casus omissus* in the Waterworks Clauses Act. That Act provides that any interference with the road shall take place under the superintendence and control of the persons managing the road. The question may arise, who has the management of a level crossing? Is it the road authority, or the railway authority? In one instance in our district the railway company have claimed rights of ownership in respect of these level crossings, and have called upon us to pay an acknowledgment of 20s. for going under the road at that point, though we had a statutory easement in respect of the road before the railway company obtained any power over it.

Mr. RICKARDS: That claim is perfectly un-

tenable. The road still remains a public road, though the railway company lay their rails across it. Have you any pipes under the roads which the railway company now propose to cross?

Shrubsole: Not at present; but these roads are within our limits, and we not only have power at any time to break them up for the purpose of laying down pipes, but we might be compelled at any time to do so upon a requisition by inhabitants.

Saunders (for promoters): The petitioners have merely a potential right which is affected by the bill. The railway company only ask for an easement over the road, and the right of anybody else in the road remains as it is. Whatever power of dealing with the road is given to us is subject to pre-existing rights, whether possessed by the local board of the district or by gas or water companies. The possession of an easement by a water or gas company gives them no right to be heard against a third company seeking a like authority over a public road, even if they have mains under the road proposed to be interfered with. All the petitioners' rights will remain untouched by the bill. The following cases govern this petition:—*Cheshire Lines Bill* (2 Clifford & Stephens 246); *Hindley Local Board Bill* (*Ib.* 229); *North Eastern Railway Bill* (1 Clifford & Rickards 176).

The CHAIRMAN: The *locus standi* of the South Staffordshire Waterworks Company is *Disallowed*.

Agents for Petitioners, *Dyson & Co.*

Petition (3) of TRADERS, FREIGHTERS, &c.

Railway—Increase of Rates—Traders, Freighters, &c., objecting to—Mining Association of Great Britain—President's Signature on Behalf of—Trade of District represented by Mining Association—Accommodation and Wharfage, Authority sought by Railway Company to Charge for.

A railway company promoted a bill which (*inter alia*) authorised it to increase the rates already charged on a small line forming part of its system, and to charge at its discretion for wharfage and accommodation of goods or materials throughout its whole system. The bill was opposed by certain traders and freighters in the district specially affected by the bill, and also by the Mining Association of Great Britain,

comprising individuals and firms engaged in the iron and coal trade throughout the kingdom. In the notice of objections it was urged that most of the signatures to the petition were informal; but in argument these grounds of objection were abandoned, and it was urged that the Mining Association had no better title to a *locus standi* than was possessed by a chamber of commerce, and did not represent the traders specially affected, and that the remainder of the persons signing the petition and using the railways which would be affected by the change in rates did not represent a class:

Held, that as the Mining Association was composed exclusively of one class of traders, their claim to a *locus standi* differed from that of a chamber of commerce, whose members include traders of all classes, and are not necessarily traders at all; and the *locus standi* of the petitioners was therefore allowed against the clauses affecting rates.

The petitioners sought to be heard against clause 59 of the bill, which provided—"Notwithstanding anything in the Great Western railway (Amendment and Extensions) Act, 1847, or in any other Act or Acts relating to the company, the company may, for the carriage of any consignment of timber, stone, machinery, or other article which, on account of the length thereof, or from any other cause, may require that one, or more than one, carriage or truck should be specially appropriated to the carriage thereof, demand such sum as they think fit." The petitioners also sought to be heard against clause 5, which gave the company power to charge the tolls, rates, and charges in the schedule, providing that the company may charge "a reasonable sum for wharfage or other accommodation of goods."

The petition was headed, "The humble petition of the undersigned traders and freighters using the railways of the Great Western railway company, and of the Mining Association of Great Britain," and it was signed first by "G. Fereday Smith, president of the Mining Association," and by the secretary, "for and on behalf of the Mining Association of Great Britain, in pursuance of a resolution adopted at a special meeting of the council of the Association, held on the 20th day of February, 1877."

The *locus standi* of the petitioners was ob-

jected to, because (1) as regards the Mining Association of Great Britain, in whose behalf the petition purports to be signed by G. Fereday Smith, the president, and M. W. Peace, the secretary of that association, the promoters contend that according to practice the petition must be deemed to be the petition only of the two persons actually signing the same, who are not entitled to be heard; (2 and 3) a similar objection applies to various firms, companies, or persons, on whose behalf the petition is signed or purports to be signed; (4) various names or designations attached to the petition are not the names of individuals, and in the case of firms, partnerships and companies not incorporated, it does not appear by whom those names or designations have been attached to the petition; (5) the works or undertakings of several of the persons and companies by whom or on whose behalf the petition purports to be signed, are situate at a considerable distance from any part of the railways of the promoters, and those persons and companies have not either as traders or freighters such an interest as entitles them to be heard; (6) the persons to whom the foregoing objections do not apply, are not sufficiently numerous nor of sufficient importance as compared with the actual number and importance of traders or freighters of the same class upon the promoters' railways (which extend over upwards of 2,000 miles), to entitle them to be heard as representing a class; (7) as regards the tolls, rates, and charges proposed to be authorised in respect of railway No. 5, no person is entitled to be heard against the bill, except those who are traders, freighters, or passengers upon such railway, and such of the petitioners as are so interested are not sufficiently numerous or of sufficient importance to represent a class; (8) the bill does not contain any provision altering the tolls, rates, and charges which the promoters are authorised to demand, except clause 59; and if any of the petitioners are entitled to be heard against the bill (which the promoters do not admit), they are only so entitled as regards that clause; (9) the petitioners have no right to be heard according to practice.

Milward, Q.C. (for petitioners): The words in the schedule to which we object would enable the company to charge for wharfage or other accommodation of goods, whereas no other railway company is at present allowed by law to do so. It has been decided in the case of *Lancashire and Yorkshire Railway Company v. Gidlow* (L.R. 7, H.L. 517) that the company have no power to charge for the accommodation of goods, which may be the reason why these words are inserted in the schedule. The objections apply almost entirely to the way in which the petition is signed "for

and on behalf of the Mining Association of Great Britain." As the petition sets forth, this is an association "formed by and for the express purpose of representing the coal and iron trades of England and Scotland, and amongst other objects, for the purpose of watching and taking action on their behalf as to all bills in Parliament affecting those trades." This bill was discussed at a meeting of the council of the association. The council decided upon petitioning, and authorised the president and secretary to sign such petition on behalf of the association, and the petition is signed accordingly; the authority to do so being clearly shown.

Sir H. D. Wolff: We have decided against the right of a Chamber of Commerce to petition.

Milward: That was because they did not represent any class of traders and were not necessarily traders at all.

The *CHAIRMAN*: These firms are themselves engaged in the coal and iron trades?

Milward: Every one of them. They are elected by the traders and are traders themselves. It is not disputed that such an association might petition if the petition were properly signed, but how could they sign in any other way? It derives its force from the resolution of the council; it is verified by the signatures of the president and secretary; and it differs from the petition of the ironmasters in the *North Eastern* case (2 Clifford & Stephens 147), because there the name of the association was not referred to either in the heading or the body of the petition. [*He was then stopped.*]

Saunders (for promoters): I shall contend not that the petition could have been signed in any other way, but that these persons cannot be heard as representing a class.

Mr. Rickards: Not this Mining Association?

Saunders: I should say not.

Milward: The minute book of the association shows that the executive council consists of gentlemen from Lancashire and Cheshire, into both of which counties the Great Western runs.

The *CHAIRMAN*: Do clauses 5 and 59 apply to Great Western lines everywhere?

Milward: Clause 59 does, but clause 5 and the schedule only apply to a little new line at Monachorum in Devon.

The *CHAIRMAN*: The question is, are these gentlemen carriers on the Great Western?

Milward: The Great Western runs through the Forest of Dean, and through South Wales. There are delegates on this association representing the South Wales trade; the Dean Forest trade, and the Somersetshire trade.

Saunders: They do not allege that they send goods by this line of railway.

Milward: The objections do not say that we

do not. You are precluded from raising that point because your notice of objection does not raise it, and does not say that our petition is defective, in not showing that we are traders and freighters on this line of railway.

Saunders: As regards the Mining Association I take the objection that the petition is not a petition upon which these two persons, viz., the president and the secretary, or either of them, are, or is, entitled to be heard. If you decide that the petition is properly signed by the Mining Association, then they would come under paragraph 6 of the objections, "The persons to whom the foregoing objections do not apply" (that is to say, to whom you do not hold them to apply) "are not sufficiently numerous nor of sufficient importance as compared with the actual number and importance of traders or freighters of the same class upon the railways of the promoters (which extend over upwards of 2,000 miles), to entitle them to be heard as representing a class." We do not distinctly state that they are not traders and freighters, I admit, but we say generally that they do not represent a class entitled to be heard. As to their right to be heard against clause 5 and the schedule, there is no allegation that any of these traders carry even to the point of junction from which this new line will be made.

Milward: No doubt the traders signing the petition will go there if the line is made. We have large depôts of coal close by. We object to these words being inserted in the bill, as putting in the thin end of the wedge.

Saunders: If these petitioners are heard against this schedule, all traders would be entitled to be heard against the schedule of tolls on every new line.

Sir H. D. WOLFF: Why should they not?

Saunders: These petitioners have no official position at all; they are in just the same position as chambers of commerce. If chambers of commerce are not allowed to be heard, why should these petitioners be heard?

Mr. RICKARDS: Because they are traders. Chambers of commerce, as such, are consultative bodies.

Saunders: A mining association is exactly the same, limited to a particular trade. Chambers of commerce deal with commerce generally, and as such, *prima facie*, they would perhaps have the right to be heard in respect of matters affecting commerce generally.

The CHAIRMAN: This is a petition of a combination of firms who are actually traders; that is the difference.

Saunders: The members of chambers of commerce are traders. I take it, if a chamber of commerce had petitioned against clause 5

and the schedule, they would have had exactly the same right to be heard as this mining association. I class the petitioners and chambers of commerce both in the same category. If these petitioners are heard, then any trader in any part of the country might be heard against any bill providing that tolls should be payable for any particular services. According to decided cases, traders and freighters are not entitled to be heard against new scales of tolls for a new line.

Mr. RICKARDS: I do not think there is any such decision. They cannot be heard against existing tolls, but they can of course be heard against any bill which authorises the levying of tolls for the first time, or which professes to vary existing tolls. They are the very parties interested, always assuming they properly represent the trade. Where a railway company comes to Parliament proposing to take power to levy tolls in any district, who could more properly be heard than those who carry on business in the district?

Saunders: Yes. But the mining association do not say they so carry on business in the district. I doubt whether many of the members of the association have any interest in this district.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed* against clauses 5 and 59.

Agents for Traders, Freighters, &c., *Sharpe & Co.*

Agents for Bill, *Sherwood & Co.*

GREENOCK POLICE AND IMPROVEMENT BILL.

Petition of OWNERS and OCCUPIERS of MILLS.

21st March, 1877.—(Before Sir HARCOURT JOHNSTONE, M.P., in the Chair; Sir HENRY DEUMOND-WOLFF, M.P.; and Mr. RICKARDS.)

Consolidation Bill—Town Improvements—Statutory Exemption, Repeal of—Right to general Locus Standi in support of—Rating Bill—Increased Rates, Effect of, in Depreciating Property—Owners and Occupiers—Right of Owners to general Locus Standi against Bill—Increasing Existing Rates—Representation of Occupiers by Local Authority—Preamble and Clause Opposition Discussed and Distinguished.

Under various private Acts the Water Trust of Greenock (who were the local authority in that

borough) and their predecessors in title, supplied with water power certain manufacturers and mill-owners whose works were situated along the course of the town aqueduct, and who were to be rated for police and other purposes on a lower scale than that applicable to the ratepayers generally. In a bill of 500 clauses for consolidating and amending the provisions relating to the police, for authorising certain improvements, and for other purposes, the local authority now proposed to repeal the provision (section 44 in the Act of 1865) in favour of the mill-owners, and by clause 59 to subject them to a higher assessment. The petitioners complained of this repeal of their statutory exemption, and their *locus standi* on this ground was not disputed, but it was further urged on their behalf that the question involved was really one of preamble, and also that such of them as were owners had a right to a general *locus standi*, since the bill proposed an increase of existing rates for purposes of town improvements, and thereby would permanently depreciate the value of property. For the promoters, it was contended that the petitioners were not entitled to canvass the whole bill upon the question raised by them; that the bill in its rating proposals only affected occupiers, and therefore that owners had no right to be heard against it; and that the occupiers were represented by the local authority:

Held, that the *locus standi* of the petitioners must be limited to the repeal of the statutory exemption now enjoyed by them, which was a question of clauses and did not affect preamble; and that the proposed increase of rates gave to the petitioning owners no right to be heard.

(*Per Cur.*) If the decision on the preamble would conclude the question raised upon the opposed clauses, a *locus standi* ought to be given against so much of the preamble as affects those clauses; but if the preamble might be passed without concluding anything upon the particular clauses, then the opposition should be limited to the clauses.

The *locus standi* of the petitioners was objected to, except as to the proposed repeal of section 44 in the Act of 1865, and the proposed assessment under clause 59 of the bill, because (1, 2, 3, and 4) no land or property of theirs will be taken compulsorily or otherwise affected; and, except as aforesaid, the bill will affect no rights or interests of theirs which are distinct from those of other ratepayers and inhabitants, and those general interests are represented by the promoters, the Board of Police of Greenock; (5) except as aforesaid, no new charge or burden will be thrown upon the property of the petitioners within the town of Greenock distinct from that of other owners and ratepayers; (6) the petitioners are represented by the Board of Police; (7) they do not represent the inhabitants, ratepayers, or owners, and (8) have no interest entitling them to be heard.

Cripps, Q.C. (for petitioners): We oppose the bill on certain special grounds, as owners and occupiers of property proposed to be affected by the improvements and improvement rates, and also on general grounds. It has been established as a general principle that owners who allege that their property may be injured by having to pay a higher rate are entitled to be heard against the provisions of a bill of this kind. Occupiers may be supposed to be represented by the corporation, but the corporation are not elected by, and do not represent, owners of property.

Mr. RICKARDS: Does the bill propose an increase of existing rates, or an imposition of new rates?

Cripps: Both.

Littler, Q.C. (for promoters): No new rate is imposed upon you.

Cripps: Yes, by clause 488.

Littler: That is upon occupiers, not upon owners.

Cripps: The imposition of a rate upon occupiers affects the property of the owners. A limited *locus standi* is conceded to us, but the clauses to which our opposition is directed are connected with the general object of the bill, and the real way of fighting these clauses is to fight the general principle of the bill.

Mr. RICKARDS: Do you ask for a *locus standi* against the whole 500 clauses?

Cripps: No doubt we should have nothing to say to a great part of the bill, but we ask to be heard generally against the preamble.

Mr. RICKARDS: If the decision on the preamble would conclude the question raised by you on the clauses against which your opposition is directed, no doubt you ought to have a *locus standi* against so much of the preamble as affects these clauses; but if the preamble might be passed without concluding anything upon the

particular clauses, then you ought to be limited to opposition to the clauses.

Cripps : What the promoters say is, "We will give you a limited *locus standi* against clause 59, but we will not allow you to watch the bill under which we are going to prove the necessity for clause 59;" that is to say, "We seek to be allowed behind your back to show that there is an absolute necessity for raising those rates, and when we have done that, you are to come in for the first time and say, 'You ought to maintain our exemption in the same way as before.'"

Mr. RICKARDS : Might not the Committee pass the preamble, and afterwards strike out or alter the clause to which you object?

Cripps : They might. On the other hand, they might say—"No, we will not strike it out, as it has been proved to us that a larger amount of money should be spent in Greenock than before; we are satisfied that such an expenditure is required; we think you will either get the benefit of the larger expenditure, or you have no right to oppose what your fellow-townsmen desire; and, therefore, we cannot help you." We say we are entitled to prove that there is no necessity for the increased rating; and the only ground for abolishing our exemption must be that the corporation requires more money, which is a question of preamble.

Mr. RICKARDS : The extra tax imposed on you would be only a small fraction of that required for the purposes of the bill.

Cripps : I do not know that. It may be a very large proportion for all I know. If the case to be made for the whole bill is part of the case necessary to be made for the clause, are we not entitled to be heard against the whole bill? Unless there was an alleged necessity for raising further money by rating, it is clear that the existing statutory provision in our favour would not be touched; and we want to be heard to show that no such necessity exists, and that, therefore, the corporation are not called on to interfere with us.

Mr. RICKARDS : The bill provides that there shall be a certain maximum rating. This would allow a margin which, if the Committee think that your burden ought not to be increased, would enable the corporation to dispense with such increase and leave you alone.

Cripps : That might or might not be. It is quite sufficient to answer that it might be the other way.

Mr. RICKARDS : The Committee might say:—"In consideration of our striking out that clause, which we think would press hardly upon the mill-owners, we will increase the maximum by so much."

Cripps : Yes. On the other hand, having,

behind our backs, been impressed by the promoters with the necessity for raising a certain sum, the Committee might say, "We think you must dispense to this or that extent with the protection you have hitherto enjoyed." If that be so, we ought undoubtedly to be before the Committee in the earlier stage of the bill, and show, if we can, that it is not necessary to spend any more money in Greenock. No danger arises to our statutory protection until the Committee are satisfied of the necessity for spending more money.

Mr. RICKARDS : The preamble does not specify the quantum of the sum necessary to carry out the improvements?

Cripps : No; but it says that certain improvements are desirable. We say they are not, and therefore contest the necessity of raising any money at all. If we succeed in that contention our statutory protection is perfectly safe.

Mr. RICKARDS : Suppose the clause in the bill affecting you were one which affected an individual to a comparatively small extent, say £50, would you contend that he ought to be heard against the preamble?

Cripps : Extreme cases hardly prove anything. The principle would be the same; but here is an important interest, represented by a large class of persons who will be confessedly injured by the bill. Why should they be limited in their opposition to a particular clause? Assuming that the Committee gave us every latitude on the clause, we should be embarrassed by not being allowed to appear against the bill in its earlier stage. If we have a right to appear against the bill at all, surely we have a right to appear without being weighted by anything which would prevent our opposition being urged at the proper time, when only it would have its due and proper effect. The object of limiting us to a clause is to make it impossible for us thoroughly to contest that clause. We should have to proceed upon the assumption that the money must be raised, and should have a very poor chance of maintaining our exemption. In the *Cardiff* case (2 Clifford & Stephens 154) the *locus standi* of owners was not limited.

Mr. RICKARDS : They had a landowners' *locus standi*.

Cripps : If a clause does not in any way depend upon the general principle of the bill, a right to appear against the clause only would, no doubt, meet the case. On the other hand, if the case to be made for the bill affects the question to be determined upon the clause, petitioners ought not to be limited to the clause, but should have a general *locus standi*. Here the necessity for raising money is involved in the preamble, against which therefore we have a

right to be heard. Independently of this special grievance we have a right to appear as owners of other property in the borough which is affected by the bill. We say that the proposal to increase the rate for police purposes from the existing maximum is unjustifiable and uncalled for. The cases show that an owner of property is entitled to be heard against increased rating which may injure his property. (*St. Helen's Borough Improvement Bill*, 1 Clifford & Stephens 52; *Cardiff Improvement Bill*, *Ib.* Vol. ii., 154; and *Hove Improvement Bill*, 1 Clifford & Rickards 30.)

Little, Q.C. (in reply): Apart from clause 59, upon which we concede the *locus standi* of the petitioners, the bill imposes no increased taxation upon owners.

Cripps: Yes, under clause 488.

Little: That clause imposes taxation on occupiers, not on owners.

Cripps: Owners are affected if increased taxation is thrown upon occupiers.

Little: The provisions complained of in the petition already exist in previous Acts, of which the bill is a consolidation. The object has been to comprise in the bill all previous enactments, so as to embody a complete code.

Cripps: There are differences between the sections of existing statutes and some of the clauses of the bill.

Little: No new taxation is proposed; nor do these petitioners say that their property will be depreciated in value. They simply say that they are owners and occupiers of property within the borough, and therefore they object to the bill. As occupiers they cannot be heard, being represented by the promoters; and if you allow owners to be heard in every case where an increase is proposed in the assessments upon occupiers, I do not know what would happen in the case of a London or Liverpool bill. In fact, wherever power was taken to levy a larger rate than the already existing rate, every owner might petition separately.

Mr. RICKARDS: I do not see any paragraph in which the petitioners complain of the effect of the bill upon their property as owners.

Cripps: We say that the provisions of the bill will be injurious—that is, to us as owners of property; and though the rate falls upon the occupiers, it will injure us as proprietors.

Little: This is, in fact, a ratepayers' petition, though the petitioners may have lugged in the words that the bill will impose burdens upon the owners of property generally. The petitioning mill-owners have a right to be heard against the repeal of existing exemptions; but they have no right in this capacity to say the

bill is unnecessary. (*Kingstown Town Bill, Petition of Dublin, &c., Railway Company*, 1 Clifford & Stephens 46.)

Mr. RICKARDS (after deliberation): The Referees are of opinion that the *locus standi* should be Allowed only against clause 59 or any other clause of the bill which may affect section 44 of the *Greenock Police and Improvement Bill*, 1865.

Cripps: I suppose we may appear on the preamble for the purpose of defending our right to appear against the clause. I do not know what may be done behind our backs.

Mr. RICKARDS: We do not think you ought to have a *locus standi* against the preamble.

Agents for Bill, *Simson & Wakeford*.

Agents for Petitioners, *Grahame & Wardlaw*.

GREENWICH AND MILLWALL SUBWAY BILL.

Petition of MASTER WARDENS, and COMMONALTY of WATERMEN.

18th April, 1877.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Subway — Ferry — Apprehended Competition between—Common Law definition of Ferry—Statutory Rights to—Evidence as to Petitioners' rights in Ferry—Ferry in one Direction only—Competition, how far Substantial—Abstraction of Traffic—Competition, distinct from Physical Interference with Ferry—Termini of Subway and Ferry not Identical.

The bill proposed the formation of a subway from Greenwich to Millwall. The petitioners were a corporation owning several ferries, and among them one called a Sunday ferry, from Greenwich to a point in the Isle of Dogs called Potter's ferry. The latter was now owned and worked by a railway between the same points as the Sunday ferry, but in an opposite direction, each of them having, as was shown in evidence, only the right of ferrying passengers in one direction from shore to shore. The subway and the petitioners' ferry would practically run to the same point in the Isle of Dogs, but at Greenwich their termini were 200 yards apart. The promo-

ters maintained that under these circumstances there could be no substantial competition :

Held, however, that the bill authorised such a competition as might result in a material abstraction of traffic from the petitioners' ferry, and that the petitioners were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands or property in which they have any estate or interest can be taken or interfered with under the powers of the bill; (2) they are not the conservators of the river Thames, nor have they any interest in, or authority over it, to entitle them to be heard according to practice; (3) they have no right or interest in any ferry with which the proposed subway could compete; (4) the only ferry which could possibly be affected by the subway is a private ferry called Potter's ferry, close to the proposed site of the subway, but this ferry is owned by the London and Blackwall railway company, who petition; (5) even if the Sunday ferries referred to in the petition were affected by the bill, the petitioners have no such right or interest in them, either by Act of Parliament, or otherwise, as to entitle them to be heard against the bill; (6) the petitioner alleges no ground for a hearing according to practice.

Pope, Q.C. (for petitioners): This subway will be in direct competition with a ferry called a Sunday ferry, which is our property, and let by us to tenants, the rental being appropriated under our statutes to charitable purposes in connection with our institution. The subway will go under the Thames from Greenwich to Millwall, and our ferry runs from Greenwich to Potter's ferry. Potter's ferry is a private ferry now owned by the London and Blackwall company, which runs in the opposite direction to ours, from the point called Potter's ferry to Greenwich, and we, each of us, have only the right to run in one direction. Under an Act of 6 Henry VIII., we had powers given to us to provide a fund for aged watermen by means of the profits arising from certain Sunday ferries, and among them this ferry, and under 7 and 8 George IV. we have power to appoint watermen to ply and work on the Thames every Sunday. Substantially, the question whether a right of ferry gives a *locus standi* where a bill is promoted for a subway competing with it is *res judicata*. In the *Thames Subway Bill* of 1863, where a ferry was 330 yards distant from the subway, a *locus standi* was allowed to the ferry,

and in the *Tower Subway Act*, 1868, provisions were introduced for the protection of a ferry. With regard to objection 4, the promoters cannot exclude us from being heard because they confess that they interfere with another set of petitioners, unless indeed they can prove that we are merged in the Potter's ferry, and have no separate existence. The question is, have we such ferry rights as entitle us to be heard on the ground of competition? I do not say that this subway is a physical disturbance of our ferry rights, because the cases at law decide that there must be actual trespass to justify an action for disturbance.

Pember, Q.C. (for promoters): I must ask you to call evidence to prove the ferry.

Mr. Henry Humphries (called and examined by *Pope*): I have been clerk to the master wardens and commonalty of watermen for 28 years, and have known the ferry in question from personal experience for that period, and before that from the records of the commonalty. It is let by a yearly lease. I produce the lease from 30th March, 1876. Our right to it was confirmed in an action brought by the Potter's ferry company against our watermen in 1815, and again in 1830. They attempted to establish a right to a ferry from Greenwich to Potter's ferry, as well as *vice versa*, but failed on each occasion. We have under our Acts appointed this ferry from time immemorial.

Cross-examined by *Pember*: It was established in the Queen's Bench that we have a right of ferry over the line of Potter's ferry, only in the opposite direction. The subway will be about 200 yards from the ferry. I rather think the railway steamboats have worked Potter's ferry both ways. I have rarely been present on a Sunday, and have never myself seen it worked both ways. Till it was sold to the railway company, Potter's ferry was frequently worked backwards and forwards by either our watermen or theirs; but that was by an arrangement between themselves.

Re-examined: Potter's ferry was formerly owned by the Potter's ferry company, and it was with them that we had the successful litigation. We have continued to let our ferry without interference from the railway company since they acquired Potter's ferry.

Pember (in reply): The questions of interference and competition with a ferry are closely interwoven. The case of *Newton v. Cubitt*, 5 C.B.N.S., 627, 28 L.J.C.P. 176, and *Mathews v. Peache*, 5 El. and Bl., 546, and 25 L.J.M.C. 7, have determined that a ferry means a junction over the water of two highways and nothing more, and therefore the petitioners here have not a ferry at all.

Mr. RICKARDS: The statutory right given them in their Act of 1859 is not so limited as the common law definition of a ferry.

Pember: Their ferry is between a point in the Isle of Dogs and a certain point in Greenwich. The subway goes from about the same point in the Isle of Dogs to quite another point in Greenwich.

Mr. RICKARDS: Is not the question with which we have to deal, this—whether the subway will subtract traffic from the existing ferry?

Pember: I submit the competition is too remote. The people who are taken across the river in boats would not be the same as those taken by the subway from railway to railway.

The CHAIRMAN: The Court are of opinion that the *locus standi* of the Petitioners should be Allowed.

Agents for Bill, Wyatt, Hoskins, & Hooker.

Agents for Petitioners, Simson & Wakeford.

LERWICK HARBOUR IMPROVEMENTS BILL.

Petition of NORTH OF SCOTLAND AND ORKNEY
AND SHETLAND STEAM NAVIGATION COMPANY.

21st March, 1877.—(Before Sir HARCOURT JOHN-
STONE, M.P., in the Chair; Sir H. DRUMMOND-
WOLFF, M.P.; and Mr. RICKARDS.)

*Harbour Improvements—Rates Levied for Tolls
on Shipping—Single Traders, Representation
of Shipping Trade by—Private Partnership—
Trading Company not Incorporated, Petition
of—Managing Directors—Authority of, to Sign
Petition—Preamble not involved in Rating
Clause.*

A bill to improve the harbour at Lerwick, and for that purpose to constitute a body of harbour trustees and impose rates on shipping, was opposed by the directors of a private firm of steamship owners trading to Lerwick, among other places, who were willing to contribute their fair quota of taxation, but complained that the proposed rates would be excessive, and would be devoted to other than harbour purposes. It was objected (1) that their ships did not belong to the port, but only traded thereto; (2) that they were a single firm of traders, representing only individual interests; and (3) that, not being an incorporated company,

the petitioners were not directors in any statutory sense, and could only petition Parliament in pursuance of express authority from the shareholders, failing which authority the petition was invalid as the petition of the company:

Held, (1) that though the company's ships did not belong to the port, their taxation for the purposes of the bill gave the company a right to be heard; (2) that the trade carried on by the company at Lerwick was such as to constitute them a class for purposes of petitioning; (3) that the directors, being appointed to manage the concerns of the company, required no special authority to petition Parliament upon a matter affecting the interests of the co-partnery; but that their opposition did not touch the preamble, and must be limited to the rating clause and schedule.

The promoters took power to raise £20,000, of which £10,000 was to be laid out on the construction of a pier where goods and passengers would be landed, instead of being landed in boats at a jetty from vessels remaining in the roadstead. The remaining £10,000 would be spent upon an esplanade and roads. For the purpose of carrying out these improvements, the bill constituted a body of harbour trustees, on which the shipowners of the port were to be represented. The petitioners, whose steamers plied to Lerwick once a week in the winter and twice a week during the summer, did not complain of the harbour works proposed, but of the excessive rates to which their steamers would be subjected, under clause 31 and in schedule B, for works, part of which, as they alleged, were for the general improvement of the town. The petitioners also objected to the qualification of the ship-owning electors.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) they allege that they trade to Lerwick where there is no harbour, but they are not entitled to be heard to object to the constitution of a body of harbour trustees or to the construction of the works proposed; (3) their ships do not belong to the port, but merely trade thereto at their own pleasure; (4) they are a single firm of traders representing only individual interests, and not the interests of a class or of the general body of shipowners, traders, and freighters; (5) they do not object to the principle of the bill, but only to clauses,

and are not, therefore, entitled to be heard against the preamble; (6) they allege no interest sufficient to support a *locus standi*; (7) if they are a corporation the petition should have been under the common seal; if they are not a corporation the persons signing the petition do not represent the petitioning company in Parliament, and the petition does not state that such persons were at any meeting or otherwise authorised or empowered to sign the petition.

Balfour Browne (for petitioners): Though we now pay no rates, we admit our liability to pay such dues as may be necessary strictly for harbour purposes, but we object to contribute to the cost of works which will do no good to us or our steamers. For these the town itself ought to pay. Then we allege that the proposed rates will be exorbitant as compared with those charged at other ports. The promoters have, in fact, acknowledged our right to a *locus standi*, for under the bill shipowners are to be represented in the harbour trust. As to the objection that we are a single firm of traders, the fact is that at Lerwick there is only one steamboat belonging to the port, and we own part of it. We are the only steamship owners, and practically the only shipowners, and must be taken to represent a class. Our allegations go substantially against the preamble, and so ought not to be confined to clauses.

The CHAIRMAN: Is the whole of the money levied under the bill to be derived from tonnage rates on ships and goods?

Browne: Yes.

Shiress Will (for promoters): This is not an improvement bill but a harbour bill, and the general town improvements, so called, are really roads leading to the harbour.

Browne: As to objection 7, the company is not a corporation, and has no common seal. It is a partnership company, and all the directors sign the petition. This fact does not appear upon the face of the petition, but we can show from the minute-book that the directors were duly authorised to sign the petition at a meeting of the board.

Will: Evidence is not admissible to supplement the allegations of the petition in such a case. (*Swansea Bill*, 1 Clifford & Rickards 117.)

Browne: The *Liverpool Improvement Bill* (1 Clifford & Stephens 3), the *Margate Pier and Harbour Bill* (2 Clifford & Stephens 200), and the *Clyde Lighthouse Bill* (*Ib.* 42), are cases in point.

Will (in reply): The petitioners do not belong to the port. They trade to a large number of places and merely look in at Lerwick occasionally.

Mr. RICKARDS: They say that their steamers

ply regularly to and from Lerwick. They are not, therefore, casual traders.

Will: I admit that, but they do not belong to the port.

Mr. RICKARDS: Whether they belong to the port or not, they will have to pay these tonnage dues. The foundation of all *locus standi* is that the petitioners will be affected in their pockets or interests by the bill. Is it not so here?

Will: In the *Maryport Improvement Bill* (Smeth. 128), shipowners who traded to Maryport were not allowed a *locus standi*, they not alleging that they belonged to the port.

Mr. RICKARDS: It does not follow that that was the only ground for the decision of the Referees.

Will: The *Forth and Clyde Navigation Bill* (1 Clifford & Stephens 66), raises the same point. We also object that the petitioners are a single firm of traders. The Lerwick traders who send and receive the goods do not petition, though they are the persons chiefly interested. The petitioners do not represent them or the owners of sailing ships going to and from the port. (*Great Western Railway Bill*, 2 Clifford & Stephens 247; *North British Railway Bill*, *Petition of Coltness Iron Company*, Smeth. 129; *Caledonian and Scottish Central Railway Bill*, *Petition of Messrs. Baird*, *Ib.* 126; *Ely and Ogmere Valley Junction Railway Bill*, *Ib.* 99.) The case is to be distinguished from that of the *Caledonian Railway (Grangemouth Harbour) Bill* (1 Clifford and Rickards 209), for there the Carron company, who were single traders, had constructed vessels of a special character with a view to the navigation, and they monopolized the trade between Grangemouth and London. The petitioners here do not claim that they monopolize the trade of Lerwick. At the best this is but a clause opposition, for the petitioners expressly say that they do not desire to oppose the construction of a landing pier or other harbour improvements, and are willing to contribute their fair share towards these improvements. We also object that those who sign the petition are not entitled to represent the company. They call themselves directors, but they are not directors in any statutory sense, namely, as persons nominated or elected by shareholders in pursuance of the Joint Stock Companies' Act. This is a mere trading company, who may if they choose nominate a committee of management, but this does not give such committee the power of petitioning Parliament unless by express authority of the company. In such cases a resolution of the company must give them this authority, but the petition contains no trace of any such resolution. (*Swansea Harbour Bill*, 1 Clifford & Rickards 117.)

Mr. RICKARDS: Are there shareholders in this company?

Browne: Yes; under a deed of co-partnership they elect, to manage the concern, certain persons who are called directors, and all of these directors sign the petition.

Will: That being so, it is essential that the petition should allege that they were authorised by the partnership to petition Parliament, and in the absence of such an allegation, the petition is bad.

Browne (replying upon the cited cases): In the *Swansea* case the sanction of a quorum was alleged to be necessary. Single traders have been admitted as petitioners. (*Carlingford Lough* case, 1 Clifford & Rickards 180.)

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Allowed* on clause 31 of the bill, and on schedule B.

Browne: And, I assume, against so much of the preamble as relates thereto?

Mr. RICKARDS: Is there anything in the preamble relating to clause 31 and schedule B?

Browne: The preamble recites that it would be a public and local advantage if the promoters were allowed to construct the works. The question of the expediency of constructing the works is involved in the question of the rates.

Mr. RICKARDS: You will raise the question which you are interested in on the clause.

The CHAIRMAN: I assume that you will go before the Committee and urge that the tolls should be reduced.

Agent for Bill, R. M. Gloag.

Agents for Petitioners, Martin & Leslie.

LOCAL GOVERNMENT BOARD PROVISIONAL ORDER CONFIRMATION (LOWER THAMES VALLEY) BILL.

Petition of the CORPORATION OF KINGSTON-ON-THAMES.

27th July, 1877.—(Before Mr. PEMBERTON, M.P., in the Chair; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Clauses, appearance on—How far an Estoppel in Second House—Rule as to, discussed—Lord Redesdale's opinion respecting, in House of Lords—Agreement by Petitioners to Withdraw Opposition—Breach of faith in Continuing Opposition, Alleged.

A bill to confirm a Provisional Order for uniting several districts for drainage purposes was

opposed, on preamble, by the corporation of one of the towns so united. It was objected that the petitioners were precluded from such opposition on the ground that in the House of Lords they had failed in their opposition to the preamble, and had afterwards obtained certain protective clauses. The petitioners admitted that they had discussed clauses, but denied that they had relinquished their opposition to preamble, and contended that the situation had changed through the exclusion in the other House of the district of T., which was comprised in the original bill. It appeared, however, from the record of proceedings in the House of Lords, that petitioners' counsel had not stated, after the exclusion of T., that the clauses offered to the petitioners thereby became unsatisfactory. Counsel now urged that petitioners, notwithstanding a clause opposition in one House, were entitled, in the discretion of the Committee of the second House, to raise there any point not expressly decided by the first Committee:

Held, "upon the facts of the case," that the petitioners here were excluded from reviving their opposition either to preamble or clauses.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs will be interfered with; (2) they do not allege that they are the municipal authority of any town or district which would be injuriously affected by the bill; (3) they petitioned the House of Lords against the preamble, and were fully heard by their counsel before the Select Committee of that House; (4) the preamble of the bill was declared to be proved by such Committee, omitting the district of the local board of Twickenham from the operation of the bill; (5) after that decision the petitioners took part in the settlement of clauses, asked for and obtained the insertion of a clause, and were heard in opposition to a clause proposed by the local board of East Molesey; (6) the presentation of the present petition is contrary to practice, but it is also contrary to good faith, because the petitioners have entered into an agreement with the promoters by which they have precluded themselves from further objecting to the bill; (7) the Provisional Order of the Local Government Board which the bill was to confirm, provided, by clause 16, that the

cost of the main sewage works should be defrayed in direct proportion to the degree in which the districts united by the order would be benefited, such degree to be determined by the number of inhabited houses in each district; (8 and 9) after the petition of the now petitioners against the bill had been presented to the House of Lords, the agents of the petitioners wrote, without prejudice, to the agents of the promoters [*letter set forth*] that if the promoters would undertake to alter section 16 of the Provisional Order so as to leave the common fund to be contributed as under section 283 of the Public Health Act, 1875, the petitioners "would probably be willing to withdraw from further opposition." To this letter the promoters' agents replied [*letter set forth*] that the promoters acceded to the wishes of the petitioners; (10) consequent upon these letters, sub-section C of clause 2 was, after it had been settled with the petitioners, inserted by the promoters in the bill. After the decision of the Committee on the preamble, further negotiations between the promoters and the petitioners took place in the Committee room, the result being the insertion of further amendments to meet the wishes of the petitioners; (11) for the foregoing and other reasons, the petitioners ought not to be further heard; (12) they are not so affected as to entitle them to be heard according to practice.

Cripps, Q.C. (for petitioners): This is a P.O. for uniting several different districts for purposes of drainage, one of the districts so dealt with being the borough of Kingston-on-Thames. The ground of objection to our appearance is that we were heard upon clauses in the other House. Though it is supposed to be the common practice not to allow parties who have discussed clauses in one House to appear in the other House, the practice is by no means universal; Lord Redesdale is known to have said that there is no such rule in the House of Lords. There is no written rule or S.O. upon the question, and I submit that it is a matter to be left to the discretion of the Committee on the bill whether, under the particular circumstances, the petitioners who have already appeared on clauses in the other House should be allowed to be heard, assuming—which I do not admit in this case—that the identical point now raised by the petitioners has been discussed and determined upon clauses. There have been one or two cases in which the point has been raised, or hinted at, in every one of which cases the *locus standi* has been allowed, though certainly other points were raised in those cases. (*Waterford and Wexford Railway Bill*, 1 Clifford & Rickards 274; *Whitehaven, Cleator, and Egremont Railway Bill* (*Ib.*) 200; *Birmingham Water Bill*, 2

Clifford & Stephens 92.) The Referees have never laid it down that the fact of parties having appeared on clauses in the other House is a bar to their appearing in this House. The Committee on the Bill has a discretion to admit petitioners to be heard who have already appeared on clauses in the other House; and I submit that it is not competent for this Court to withdraw the exercise of that discretion from them. The case on which we seek to be heard is this:—In the scheme as originally proposed to the House of Lords, the district of Twickenham was included as one of the districts to be combined with others for the purpose of drainage. The Committee in the House of Lords struck out Twickenham, and therefore the Bill as now introduced into this House is a very different bill from that introduced into the House of Lords. This being so, we say that further time ought to be given to mature a scheme for the combination of all the districts. With regard to the objections, it is true that on the 2nd of July the promoters sent us a letter, agreeing to insert amendments at our instance; and I addressed the Committee on the 3rd of July in opposition to the bill, saying, that the main point between us was settled; but I added that there were other provisions which we wished to insert in the bill, and I expressly said we were still in opposition on preamble.

[Extracts were read from the shorthand writer's notes of the proceedings before the Committee in the Lords, and it appeared that the discussion on the clauses for the protection of Kingston occurred after the Committee had decided to exclude Twickenham; and counsel for Kingston did not say, "In consequence of the decision excluding Twickenham the clauses offered to us are no longer satisfactory."]

The CHAIRMAN: The case of the *Thames Sub-way Bill*, 1866 (Smeth. 95), shows the practice when there has been a clause opposition in one House.

Mr. RICKARDS: And May's *Parliamentary Practice* is to the same effect, namely, that where parties have obtained protective clauses in one House, they cannot re-open the question in the other House.

The CHAIRMAN: You want to raise a question on clauses distinct from the questions decided in the House of Lords?

Cripps: Yes. I am raising an objection to the altered condition of the bill.

The CHAIRMAN: In consequence of the withdrawal of the district of Twickenham?

Cripps: Yes.

Mr. RICKARDS: Is that the only point in which the bill has been altered as regards you, and in respect of which you now raise objection?

carry into effect agreements for all or any of the following purposes:—The lease of the Millwall Extension railway, or of any part thereof, and of any ferry rights connected with the said Extension railway. The working, maintenance, use, and management of the said Extension railway, or of any part thereof." We allege that by virtue of successive Acts of Parliament dating from the year 1836, the London and Blackwall railway company are owners of a railway extending from the East and West India docks, on the one hand, to Fenchurch-street, in the city of London, on the other hand. Between the London and Blackwall railway and the Great Northern railway lies the North London railway, over which, by the East and West India docks and Birmingham Junction Railway Act, 1850 (sec. 28), we have running powers. By the London and Blackwall Railway (Lease) Act, 1865, by which the London and Blackwall was leased to the Great Eastern, we obtained power to pass over, and use, with engines and carriages of all descriptions, the railways for the time being of the London and Blackwall railway company, including the stations, buildings, and works connected therewith, and the London and Blackwall and the Great Eastern railway companies are required to afford to us and the traffic coming from or destined for the Great Northern railway, all necessary facilities for that purpose. Now while power is sought by the 27th clause to lease this Millwall extension to the dock companies, the promoters do not save or protect our rights. That we have existing rights is clear; and if we have such rights we are entitled to see that none of them are affected. The owners of the fee and the owners of the lease now together seek power to lease off a portion of the leased undertaking to the dock companies. Under the Leasing Act, under which the Great Eastern railway company got their power over the London and Blackwall, our rights are reserved. The question is whether this covenant runs with the land, that is to say, the covenant giving us our running powers and facilities. The owners in fee and the lessees may, under these powers, part with the whole control of this Millwall extension in perpetuity; if they do part with the whole of it we claim certain rights, that is to say, rights of running over it. If the covenant runs with the land, it is clear that our rights would be reserved, but if it does not so run, we shall require protection. It is not for you to decide the legal question whether or not the covenant does run with the land. In the case of the *Great Western Railway Bill*, on the petition of the Messrs. Church (*ante*, p. 14), there being a question whether the covenant

ran with the land, the petitioners were allowed a *locus standi*. This is a right not only for the Great Northern railway company, but a right for the public. In 1874, though the Great Northern were not allowed to be heard against the *Blackwall Railway Bill* (1 Clifford and Rickards, 92), which empowered the London and Blackwall and the Great Eastern to make working agreements with the dock companies, it is to be remarked that there was no leasing power in that bill. If we have any right of any kind touched by the bill we are entitled to go before the Committee and ask that a provision should be inserted in the bill to make sure that this covenant which we have got with the Blackwall company, shall enure to our benefit, when the property with respect to which it is granted is in the hands of another company.

Pember, Q.C. (for promoters): The fact that we are going to give a lease of this line does not make any alteration in existing legislation. The control of the Millwall extension has been already parted with by the Act of 1865. The whole line was leased to the Great Eastern, and, by the Act of 1874, power was given to the London and Blackwall and the Great Eastern to make an agreement with the dock companies with respect to the use, management, and working of the line. The railway so dealt with is as completely out of the hands of the London and Blackwall as any lease could make it. Whether a sale would interfere with covenants might be a question, but no lease can interfere with a covenant. How covenants entered into in 1877 could by any stretch of legal imagination be supposed to over-ride covenants entered into in 1874, I am unable to see. A lease is a chattel interest; running powers are a condition attached to a realty, connected with the construction and ownership of the railway, and no subsequent dealings with the railway in the direction of transfer of the chattel can possibly affect them. There is no distinction between the legislation of 1874, when the *locus standi* of the Great Northern was disallowed, and the legislation of 1877. We were then parting with our control over the railway, and it might be a question whether the railway in new hands would be to the Great Northern what it had been in ours. In like manner, in 1870, the Surrey Commercial dock company were not allowed to be heard against a bill of the East London company under which they were going to part with their control over the railway. (2 Clifford & Stephens 11.) No one would argue that a lease could over-ride the exercise of the running powers.

Mr. RICKARDS: What would you say would be the effect of a sale?

Pember: I do not believe it would touch the
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belonging to the petitioner. The petitioner sought to be heard (1) as a landowner whose land was actually, if only temporarily, interfered with; and (2) as a landowner whose property was injuriously affected by the powers of a P. O., granted under the Public Health Act (ss. 175, 176), which did not contain the usual provisions against the creation of a nuisance. The promoters objected (1) that no compulsory powers were taken over the petitioner's property, which was not only not scheduled under the Order, but was especially exempted from its operation; and (2) that with regard to the injurious affecting, the bill would not deprive the petitioner of any legal remedy for nuisance:

Held, that in the absence of any compulsory powers of purchase over the petitioner's lands, he was not entitled to be heard on the ground of injurious affecting, and that the temporary use by the promoters of land let under lease, such user being by arrangement with the lessee, and only continuing during the leasing term, gave the lessor no claim to *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) neither the P. O. nor the bill proposes to interfere with any property of his; (2 and 3) the only property affected by the P. O. in which he has any interest is the lands and quays referred to in the petition, and his interest in those lands and quays is especially exempted from interference by the P. O.; (4) he is not entitled to be heard in respect of the matters complained of in the petition, and if anybody (which the promoters deny) is entitled to be heard in respect of the way-leave referred to therein, it is the Plymouth and Dartmouth railway company;* (5) the petitioner presented a petition to the House of Lords against the said bill, but he did not appear, but allowed the P. O. to pass in the form in which it now stands; (6) the petitioner alleges no ground for a hearing according to practice.

Littler, Q.C. (for petitioner): The bill is to confirm a P. O. granted to the Town Council of

Plymouth, as the sanitary authority, to purchase certain lands for the deposit of soil and refuse collected from the streets and houses in the borough. It is true that the P. O. exempts from this power of compulsory purchase the property of the petitioner, but it takes the land on both sides of it permanently, and a piece of land of which the petitioner is owner in fee lying between the rest, which is now let to a tenant of the petitioner, is taken for this same purpose as long as the lease lasts. Our property, therefore, is actually taken temporarily.

Cripps, Q.C. (for promoters): We have ourselves been lessees under the petitioner's tenant of this piece of land for 30 years.

Littler: That fact is not material upon a question of *locus standi*. We are the owners, a point not disputed by the promoters, and though they propose to take the tenant's interest but not our interest, we are thereby entitled to be heard. Then as regards injurious affecting, our position is different from what it would be if this were an ordinary gas or water bill. In the Gas and Waterworks Consolidation Act there is an express provision that none of the powers given by the General Act or the Special Act shall be deemed to authorise the undertakers to create a nuisance. But this P. O. was granted under the powers conferred by sections 175 and 176 of the Public Health Act of 1875 for the compulsory purchase of lands, and there is no provision there against creating a nuisance, so that there will be an injurious affecting without any remedy.

Mr. RICKARDS: There is no compulsory power to take the petitioner's land?

Littler: But the injurious affecting as to which we have no remedy arises out of the compulsory powers of purchase conferred by the bill. We object to this injurious affecting in our petition. There is no decision of the Court on any case like this. In the *South Eastern* case (1 Clifford & Rickards 258) the petitioners were heard on injurious affecting.

Mr. RICKARDS: That was a very exceptional case.

Littler: This is a very extreme case, because it involves the creation of a nuisance of a very serious kind.

Cripps, Q.C. (in reply): The petitioner's land is not scheduled, and is, moreover, specially exempted from the operation of the P. O. With regard to nuisance, this P. O. gives no authority to create a nuisance. For the last thirty years we have used this same spot for the deposit of the refuse from the town of Plymouth under lease. To avoid the expense and trouble of perpetually renewing a lease, we have come now to get powers of purchase. We shall get no greater

* Evidence was called as to the way-leave referred to in this objection, and the Court held that this petitioner had no rights in connexion therewith. *Vide infra*.

be taken upon the railways of either of the two joint promoters, and the petitioners are not entitled to be heard in respect of those rates, &c.; (3 and 4) the imputations contained in the petitions with respect to unequal and unfair treatment of traffic passing over the promoters' lines, even if true (which the promoters deny), do not constitute any grounds for a hearing, nor does anything else which is alleged in the petition.

The *locus standi* of (2) iron-ore smelters, mineral proprietors, and other traders, in Cumberland, was objected to on similar grounds, and also because the petitioners had no interest in the agreement referred to in their petition, and because the bill was not a bill to which the recommendations of the Joint Report of 1872, referred to in the petition, were applicable.

Michael (for petitioners (1)) : The petitioners represent nearly the whole trade of the district, and they allege that their interests will be seriously injured if the bill passes. At present there are various routes by which we can send our iron-ore and other goods, but this bill, which is an amalgamation bill, will place the whole traffic of the district in the hands of the London and North Western company. The traders have now a route *via* Whitehaven which is not in the hands of the London and North Western, and the Cleator and Workington Junction, a line passed last year, would have been an alternative line, but now it appears that an arrangement has been made between the Cleator and Workington and the London and North Western, practically placing the whole of the traffic in the hands of the latter. This renders it all the more essential that we should have an opportunity of opposing the amalgamation sought to be effected by the bill, which will have the effect of removing all the competition to which the London and North Western are now exposed. The traffic rates which now exist were fixed when this district was thinly populated, and are in excess of what they ought to be now that the district is the centre of a vast industry, and if the London and North Western are allowed a monopoly they will certainly keep up the rates, more especially as they guarantee 10 per cent. to the line they absorb. In 1872 a joint committee of both Houses of Parliament, recommended that in cases of railway amalgamations, every possible latitude should be allowed to traders to appear.

Pembroke Stephens (for petitioners (2)) : This is not merely an amalgamation, but by clause 13, the amalgamation is so complete that it is to be all London and North Western, and no Whitehaven, Cleator, and Egremont proprietors are to vote at the London and North Western meet-

ings. In our petition we draw the attention of Parliament to the nature and various consequences of the bill, and the result we object to is that the whole of the traffic of the district in which we carry on our business will by this bill come into the hands of the London and North Western, who will thus enjoy a monopoly of the carrying trade and of course fix the rates without regard to any other interest than their own. We are of necessity extensive freighters on the lines connected by the various parts of the district, and are seriously affected by the proposals of the bill, which may result in the loss of facilities we now enjoy. This is the first time that the London and North Western have submitted the undertaking as a whole to Parliament, and the first time that the traders have had the opportunity of asking that the rates, as a whole, which are unsuited to the present trade of the district, shall be revised, that is to say, not only the rates on the Cleator line, but on some of the lines in the district which have been taken over by the London and North Western. The Cleator and Egremont by coming here, and proposing to surrender their independent existence, raise the question of the tolls throughout the whole railway system of the district, and impose on Parliament the right to review the whole subject. If we are admitted against the amalgamation for one purpose, we have a right to be heard against it for all purposes. In conclusion we call your attention to the Report of the Committee of both Houses on the subject of railway amalgamations.

Pope, Q.O. (for promoters) : All that the recommendation of the Joint Committee means is that on amalgamation bills, where traders show their interests are affected, the ordinary technical rules should not be enforced too strictly. Traders, *quid* traders, have no *locus standi* against an amalgamation bill. (*Midland and Glasgow and South Western Railway Companies Bill*, 1 Clifford and Stephens 72 and 73.) The petitioners cannot, by the rules of Parliament, be heard to protect themselves from something that they fear may arise, *dehors* the powers of the amalgamation bill. If the Court thinks the traders are damaged by the London and North Western taking power to continue to levy the tolls on the Cleator line, which are now levied on that line, we will concede them a *locus standi* to appear against that power, but not to rove over the whole bill, and revise and regulate the rates of the London and North Western. (*Monmouthshire Railway and Canal Bill*, 1 Clifford and Rickards 104, and the *Gloucester and Berkeley Canal Bill*, *Ib.* 73.)

Pembroke Stephens replied upon the cases cited by Mr. Pope.

Cripps: Will you give me the document?

Witness: No; I decline to produce title-deeds.

Mr. RICKARDS: Our rule is not to require title-deeds to be produced.

Littler: The promoters will also interfere with our roadway over these lands, which they seek to take compulsorily, so that besides taking away our way-leave they will obstruct the access to our station, or at the least, by depositing offensive heaps of refuse close by, will render it dangerous to the public. The argument I used in *Mr. Bayly's* case, as to the creation of a nuisance, applies here also, inasmuch as the bill contains no provision against it.

Cripps, Q.C. (in reply): The petitioners' title is derived from *Mr. Bayly*, their rights are over his lands, and therefore if he is exempted from the compulsory powers of the P. O., they are exempted also. The purchase of this easement was, moreover, *ultra vires*.

Mr. RICKARDS: Supposing the company have *bona fide* purchased it, we cannot enter into the question of whether the purchase was *ultra vires* or not. It might be a nice question of law.

Cripps: In the *Great Southern and Western North Wall Extension Bill* (2 Clifford and Stephens 279), a *locus standi* was refused to parties who had obviously purchased lands for the purpose of acquiring a *locus standi*. This was admitted to be the case here by the counsel for the company before the House of Lords.

Mr. RICKARDS: I do not think that we shall hold *Mr. Littler* bound by the admission of counsel in the other House.

Cripps: *Mr. Bayly* is protected, and, therefore, those under him are protected.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for the Bill, *Sherwood & Co.*

Agent for Petitioners (1) and (2), *Batten*.

LONDON AND BLACKWALL RAILWAY BILL.

Petition of the GREAT NORTHERN RAILWAY COMPANY.

9th April, 1877.—(Before *Mr. BRISTOWE, M.P., Chairman*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Railway, Lease of—Running Powers and Facilities to third Company—Transfer of Leased Line to Dock Companies—Protective Clause sought on by Third Company—Covenant running with Land.

In 1865 an Act was passed for the lease of the Blackwall railway to the Great Eastern company. By this Act the Great Northern company obtained statutory powers to run over and use the "railways for the time being" of the Blackwall company, and that company, along with the Great Eastern, agreed to give the Great Northern all requisite facilities. The Blackwall and Great Eastern companies now promoted a bill empowering them to lease the Millwall Extension line, part of the Blackwall system to certain dock companies. Against this bill the Great Northern petitioned, and asked for protective clauses, on the ground that the owners of the fee and of the lease were now combining to part with a portion of their interest in the Millwall line, and that as it was doubtful whether the covenant for the petitioners' benefit "ran with the land," their existing rights under the statutory covenant might be over-ridden by the bill:

Held, that there was nothing to show that the bill would repeal the provisions inserted in the Act of 1865 for the benefit of the petitioners, who were therefore not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no land of theirs was taken and no powers are sought over their undertaking; (2) they set forth the rights and powers they already possess in and over the London and Blackwall railway and the Millwall Extension railway, and the stations, works, and conveniences, connected therewith respectively, and also their objections to the 27th clause of the bill conferring the powers therein mentioned with respect to the Millwall Extension railway; but the petitioners are not entitled to be heard, inasmuch as the bill cannot, either by clause 27 or otherwise, operate to their prejudice, or deprive them of any of the rights and powers they now possess; (3) they do not allege or disclose any ground of objection which, according to practice, entitles them to a hearing.

Littler, Q.C. (for petitioners): The bill by the 27th clause provides that "the company and the Great Eastern railway company on the one hand, and the East and West India dock company and the Millwall dock company, or either of these companies, on the other hand, may from time to time make and

Bristol, &c., Railway Company (1 Clifford and Rickards 240), was very similar to this.

The CHAIRMAN: That was a case of competition.

Tahourdin: I put this also as a case of competition. It is a competition for traffic going to the north, and it arises out of an amalgamation which injuriously affects our interests as third parties, and will give the London and North Western a practical monopoly of all the traffic sent north from this district. So long as the Cleator company remained independent, it was their interest to send their traffic *via* the Maryport and Carlisle, and so on to our line, whereas the London and North Western will now send it by a route entirely unconnected with us.

The CHAIRMAN: Would not the railway commissioners insist upon the traffic being sent by the shortest route?

Tahourdin: On that point I will refer you to a dictum of Mr. Rickards in the case I have referred to (p. 242).

Pope was not called on.

The CHAIRMAN: We do not see any ground for *Allowing a locus standi* to the Solway Junction Railway Company.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Tahourdin & Hargreaves.*

MERSEY RAILWAY BILL.

Petition of the LONDON AND NORTH WESTERN RAILWAY COMPANY.

7th May, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Extension of Time—Completion of Railway—Interference with other Lines—Joint Ownership of—Easement over—Existing Powers—Difference between Parties as to—Undertaking not to Exercise Powers if existing—Conditional Locus.

Where power was conferred by a bill to "complete" a line, the time for that purpose being extended, complaint was made by a rival railway company that the effect would be to revive, as against them, the right of taking an easement compulsorily, though no express powers of this nature were mentioned in the bill. The promoters having disclaimed any such intention, the Court required that a clause carrying out this undertaking should be submitted to them, otherwise they would grant a limited *locus*.

The bill had for its object to extend the time for the completion of the Mersey railway.

The petitioners opposed on the ground of competition, and also of interference with property on both sides of the river Mersey belonging either to themselves, or to the Birkenhead railway, of which they were owners jointly with the Great Western company.

The *locus standi* of the petitioners was objected to, because (1) and (2) they had no right to be heard in respect of, or as representing the Birkenhead railway, neither their co-proprietors, the Great Western company, nor the joint committee of management having joined in the petition; (3) no lands, &c., of the petitioners could be taken without their consent in writing; (4) any powers the promoters possessed as to the Birkenhead railway were limited to an easement for the purpose of a crossing to be effected in manner specified by the former Acts; (5) and (6) the situation of the lines respectively showed that the petitioners could not be injuriously affected; (7) there would be no sufficient competition according to practice; (8) the petition contained no adequate grounds for a hearing.

Pope, Q.C. (for petitioners): The Birkenhead railway, no doubt, is jointly managed, and we do not insist on any claim we may have as to a junction with that line. But we do seek to be heard in respect of an easement taken over portion of our own property. It is true the bill does not, in terms, extend the time for the purchase of lands authorised by former Acts; but clause 3 gives to the company power to "complete" the railway, and must therefore involve the acquisition of this easement, as the line cannot be completed without it.

Pembroke Stephens (for promoters): The effect of the former Acts has been misunderstood. We must either have exercised our powers, in which case the land is ours already, or the powers have lapsed long since, and unless we expressly revive them by this bill, the apprehensions of the petitioners are groundless. We have no power, in fact, to acquire further lands of theirs, and are not seeking to do so. We should have no objection to give an undertaking to refrain from taking any lands of the petitioners at the point mentioned without their written consent.

The CHAIRMAN (after consideration): The parties do not seem agreed upon the facts. We think accordingly that a *locus standi* should be allowed against clause 3, unless an undertaking be given by the agent for the bill to insert a clause, previous to the hearing in Committee, binding the promoters not to exercise the powers of the bill over any lands or property of the North Western company, and if this be assented

The CHAIRMAN: We *Allow* a general *locus standi* to both sets of Petitioners.

Agents for Petitioners (1) and (2), *Dyson & Co.*

Petition of (3) *SOLWAY JUNCTION RAILWAY COMPANY.*

Railways—Amalgamation—Competition—Neutral Gathering-ground of Traffic—Absorption of, through Amalgamation—Monopoly thereby Created—Diversion of Traffic—Existing Agreements with Third Company—Benefits of, Interfered with—No Direct Interference—Injury too Remote.

The petitioners sought to be heard against the amalgamation proposed by the bill, on the ground that their interests, as carriers of traffic proceeding northwards from the district common to themselves and the promoters, would materially suffer by the amalgamation, which would create a monopoly in the hands of the London and North Western. The petitioners' railway did not join the Whitehaven, Cleator and Egremont railway, but they had an agreement, for mutual facilities of traffic, with a third company, the Maryport and Carlisle, who received traffic from the Whitehaven railway, and thus passed on to the petitioners' line the traffic derived from the railway now proposed to be amalgamated to the London and North Western. The petitioners alleged that the effect of the amalgamation would be to deprive them of the benefit of this agreement, because, if the bill was passed, the traffic hitherto sent to them from the Whitehaven railway, via the Maryport and Carlisle line, would now be conveyed northward by the London and North Western by an entirely different route by means of the local lines already in the hands of that company, and of the line now to be absorbed by them. Under these circumstances the petitioners asked to be heard against the bill on the ground of competition and diversion of traffic. It was answered on behalf of the promoters that the bill interfered with no statutory agreements between the petitioners and pro-

moters, and that the question of competition was really not involved, or was too remote: *Held*, that the injury feared by the petitioners was too remote to entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their rights and interests under the Maryport agreement are not in any way prejudiced or affected by the bill; (2) the diversion of, or the competition for, traffic complained of, even if the same were to result from the vesting effected by the bill, are not such as entitle the petitioners to be heard; (3) no competition for, or diversion of traffic, the means for which do not already exist, can arise in consequence of the provisions of the bill; (4 and 5) the petitioners are not entitled to be heard for the purpose of inserting in the bill any of the provisions suggested by them, and they allege no ground upon which they can be heard according to practice.

Tahourdin (for petitioners): Our line joins the Maryport and Carlisle railway at Brayton, and we have an agreement with that company for granting mutual facilities to one another for conveyance of traffic to and from any station on a number of adjoining lines belonging to different railway companies, and among them the Whitehaven, Cleator and Egremont company. The effect of that agreement is to give us a direct interest in all traffic coming from the Whitehaven district, including that brought by the Whitehaven, Cleator and Egremont railway, which is now proposed to be amalgamated by the London and North Western.

Pope, Q.C. (for promoters): The agreement is simply between yourselves and the Maryport and Carlisle company. The Whitehaven, Cleator and Egremont are not parties to it, or concerned in it in any way.

Tahourdin: No doubt; but the question is whether we shall suffer injury from the bill entitling us to be heard against it. We were formerly fed by traffic from the Whitehaven district through the Maryport and Carlisle line, but if this amalgamation is permitted, the London and North Western will now send that traffic north by another route, and so abstract all our traffic, and nullify our agreements.

Pope: We are not going to alter any statutory agreements.

Tahourdin: But you will make our agreement with the Maryport and Carlisle company practically useless to us by diverting on to another route all the traffic which it supplied us with. The case of the *London and South Western and Somerset and Dorset railway on the Petition of the*

Bristol, &c., Railway Company (1 Clifford and Rickards 240), was very similar to this.

The CHAIRMAN: That was a case of competition.

Tahourdin: I put this also as a case of competition. It is a competition for traffic going to the north, and it arises out of an amalgamation which injuriously affects our interests as third parties, and will give the London and North Western a practical monopoly of all the traffic sent north from this district. So long as the Cleator company remained independent, it was their interest to send their traffic *via* the Maryport and Carlisle, and so on to our line, whereas the London and North Western will now send it by a route entirely unconnected with us.

The CHAIRMAN: Would not the railway commissioners insist upon the traffic being sent by the shortest route?

Tahourdin: On that point I will refer you to a dictum of Mr. Rickards in the case I have referred to (p. 242).

Pope was not called on.

The CHAIRMAN: We do not see any ground for *Allowing a locus standi* to the Solway Junction Railway Company.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Tahourdin & Hargreaves.*

MERSEY RAILWAY BILL.

Petition of the LONDON AND NORTH WESTERN RAILWAY COMPANY.

7th May, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Extension of Time—Completion of Railway—Interference with other Lines—Joint Ownership of—Easement over—Existing Powers—Difference between Parties as to—Undertaking not to Exercise Powers if existing—Conditional Locus.

Where power was conferred by a bill to "complete" a line, the time for that purpose being extended, complaint was made by a rival railway company that the effect would be to revive, as against them, the right of taking an easement compulsorily, though no express powers of this nature were mentioned in the bill. The promoters having disclaimed any such intention, the Court required that a clause carrying out this undertaking should be submitted to them, otherwise they would grant a limited *locus*.

The bill had for its object to extend the time for the completion of the Mersey railway.

The petitioners opposed on the ground of competition, and also of interference with property on both sides of the river Mersey belonging either to themselves, or to the Birkenhead railway, of which they were owners jointly with the Great Western company.

The *locus standi* of the petitioners was objected to, because (1) and (2) they had no right to be heard in respect of, or as representing the Birkenhead railway, neither their co-proprietors, the Great Western company, nor the joint committee of management having joined in the petition; (3) no lands, &c., of the petitioners could be taken without their consent in writing; (4) any powers the promoters possessed as to the Birkenhead railway were limited to an easement for the purpose of a crossing to be effected in manner specified by the former Acts; (5) and (6) the situation of the lines respectively showed that the petitioners could not be injuriously affected; (7) there would be no sufficient competition according to practice; (8) the petition contained no adequate grounds for a hearing.

Pope, Q.C. (for petitioners): The Birkenhead railway, no doubt, is jointly managed, and we do not insist on any claim we may have as to a junction with that line. But we do seek to be heard in respect of an easement taken over portion of our own property. It is true the bill does not, in terms, extend the time for the purchase of lands authorised by former Acts; but clause 3 gives to the company power to "complete" the railway, and must therefore involve the acquisition of this easement, as the line cannot be completed without it.

Pembroke Stephens (for promoters): The effect of the former Acts has been misunderstood. We must either have exercised our powers, in which case the land is ours already, or the powers have lapsed long since, and unless we expressly revive them by this bill, the apprehensions of the petitioners are groundless. We have no power, in fact, to acquire further lands of theirs, and are not seeking to do so. We should have no objection to give an undertaking to refrain from taking any lands of the petitioners at the point mentioned without their written consent.

The CHAIRMAN (after consideration): The parties do not seem agreed upon the facts. We think accordingly that a *locus standi* should be allowed against clause 3, unless an undertaking be given by the agent for the bill to insert a clause, previous to the hearing in Committee, binding the promoters not to exercise the powers of the bill over any lands or property of the North Western company, and if this be assented

to, the clause should be forwarded to us before the decision on the *locus standi* is formally recorded in the votes.

Bell, Parliamentary Agent (for promoters): I am prepared to give the required undertaking.

Locus standi Allowed conditionally.

Agent for Bill, *Bell*.

Agent for Petitioners, *Roberts*.

METROPOLITAN RAILWAY BILL.

Petition of LONDON AND NORTH WESTERN RAILWAY COMPANY.

9th April, 1877.—(Before *Mr. BRISTOWE, M.P.*, Chairman; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Railways—Construction of Works—Railway Company as Warehouse Owners—Apprehended Injury from Works on Adjoining Lands—Structural Damage—Injurious Affecting—Railway Company, how Differing from Private Trader—Legal Remedy—Consequential Damages—Extension of Time for Construction of Railway—Competition—Res Judicata—Railway Company as Landowners—Compulsory Powers of Purchase Extended—S. O. 134—Petitioners' Line Crossed—Practice—Joint Petition—Right to be heard upon, allowed—Distinct Interests—Claim to Locus Standi withdrawn.

This was an omnibus bill, and the petitioners claimed to be heard on several grounds. The promoters sought compulsory powers for the purpose of making a station and other works upon a piece of land adjoining a goods station belonging to the petitioners. This goods station comprised warehouses, and the petitioners apprehended damage to these warehouses from the excavations necessary for the promoters' works upon the adjoining land. The petitioners claimed to be regarded in a different light to a private trader, whose warehouses might be similarly affected, on the ground that they were, as a railway company, under a public obligation to maintain warehouses for the storage of goods. The Court, however, held that this did not constitute a sufficient reason for departing from the ordinary practice of refusing a

locus standi on the ground of mere injurious affecting, and that for the grievance alleged, the remedy was damages at law, rather than special intervention by Parliament. The petitioners also claimed a *locus standi* against such clauses of the bill as extended the time limited, by an Act of 1873, for the completion and the compulsory purchase of lands for the purposes of a railway, with which they alleged they were in competition. It was answered, that this question was *res judicata*, which the petitioners were not entitled to re-open on a bill for an extension of time. They also claimed a general *locus standi* as landowners against the same portion of the bill, on the ground that the railway to which it applied crossed their line. It did not appear that any land of theirs would be actually taken, but that the promoters only asked for an easement over it:

Held, that although they could not claim a landowner's general *locus standi*, on the ground last alleged, they were entitled to be heard against so much of the preamble and two clauses in the bill, as related to the compulsory taking of lands and the execution of works for the purposes of the railway as to which an extension of time was sought, by the bill.

The *locus standi* of the petitioners was objected to, because (1) as regards the lands in London and Middlesex, proposed to be taken for the purposes of the tunnel and stations, they are not interested as owners, lessees, and occupiers, and the probability of any damage happening to their premises from the operations of the promoters is very remote, and the damage itself is such as the promoters would have to make good at law, without any special intervention of Parliament; (2) as regards so much of the petition as relates to the West London Railway and the Addison Road and Uxbridge stations thereof, the petitioners are joint owners with the Great Western railway company of that railway, and as such have deposited a joint petition against the bill, and having no separate interest in the said railway, they cannot be heard upon a separate petition with regard to it consistently with practice; (3) as regards the proposed revival and extension of time limited by the Metropolitan and St. John's Wood Railway Act,

1873, for the compulsory purchase of land and completion of the railway and works thereby authorised, the petitioners are not interested as owners, lessees, or occupiers in any of the lands to which such powers apply, and their petition discloses no other ground for a hearing; (4) as regards railway No. 3, the promoters do not seek to extend the time for compulsory purchase of lands, but only for the completion thereof. The objections urged in the petition as to competition might have been applicable to the original construction of the railway, but are not applicable to a mere extension of time for its completion; (5) the ground upon which the Act of 1873 was granted was public utility, and no circumstances now exist to alter that ground; (6) the bill does not confer any new powers with reference to the Harrow and Rickmansworth railway, or the London and Aylesbury railway, and therefore the petitioners cannot be heard against the proposed extension of time.

Pope, Q.C. (for petitioners): We seek to be heard on several grounds. First, as regards the piece of land partly in the city of London which they seek to take for the purposes of a station, a tunnel, and other works, a large portion of that property abuts upon our Haydon Square goods station, and this station consists of lofty warehouses, which we apprehend will be seriously endangered by the promoters' works, and our business obstructed. We might have a remedy at law for structural damage, but we could have none with regard to interference with traffic.

The CHAIRMAN: Would not all that be in the nature of consequential damage?

Pope: We apprehend the interference would be too remote to be assessed as damage under the legal remedy. If so, we are entitled to ask for protective clauses.

The CHAIRMAN: Do you contend that the business you carry on at Haydon Square is different to the warehouse business of an ordinary trader?

Pope: Yes; because it is business arising out of our acts which compel us to be carriers, and, therefore, to have goods warehouses. Our second objection is to the promoters seeking running powers over the West London railway, of which we are joint owners with the Great Western railway, but on this point, as we have already jointly petitioned with the Great Western railway company, we are willing not to press our claim for a separate hearing. Then we object to clauses 23 and 24 of the bill, by which it is proposed to extend the period limited by the Kingsbury and Harrow Railway Act for the compulsory purchase of lands by the promoters and the Metropolitan and St. John's Wood railway company for the purposes of the

Kingsbury and Harrow railway, and also to extend the time for the completion of that railway. The Kingsbury and Harrow railway, forms one link in a chain of railways in the vicinity of the Metropolis, over all of which the promoters have running powers. These running powers they obtained from Parliament in 1875, and on that occasion the London and North Western were granted a *locus standi* to oppose their being granted on the ground of competition with our route to Birmingham. But besides forming a link in a chain of railways which are in competition with us, the Kingsbury and Harrow crosses our line, and we have received the ordinary parliamentary notice given to owners with regard to the extension of time for the compulsory dealing with property.

Mr. RICKARDS: Those notices may be given *ex abundanti cautela*.

Pope: I submit, however, that a landowner whose interests are affected by the original construction of a line, is entitled to be heard against a continuance of those powers over his property, for a longer period than Parliament originally authorised. We had a *locus standi* in the first instance, as landowners, and as landowners we still claim a general *locus* against an extension of compulsory powers of purchase. (*Drayton Junction Bill*, 1 Clifford & Stephens 29.) The question raised in the remainder of the petition is, that this is an attempt to keep alive a portion of that competitive scheme, in respect of which, as a whole, you decided in 1875 that we were entitled to be heard. We claim a general *locus standi*, though we may ask before a Committee for protective clauses only.

Worsley (for promoters): The petitioners are not entitled to any *locus standi*. With regard to Haydon Square, the powers in the bill are merely powers to purchase; the petitioners are not scheduled; and they allege no interest in the lands proposed to be purchased. According to uniform practice, therefore, they cannot be heard as to injurious affecting. The Court has only once departed from that rule, in the *South Eastern Railway Bill*, on the petition of Messrs. Britten and Gibson (1 Clifford and Rickards 258).

Mr. RICKARDS: That was a very exceptional case.

Worsley: All they say is that we may possibly do them injury. If we commence doing it they will be able to get an injunction to restrain us, and if they find out afterwards that we have injured them, they will be able to get legal compensation.

The CHAIRMAN: Mr. Pope says that he is in a different position to an ordinary owner, by virtue of his responsibilities to the public, and that the petitioners' interests are endangered.

Worsley: The London and NorthWestern and the public will be no worse off by our acquisition of the land. They would be equally endangered if the present owner began to excavate, and we shall merely step into the present owner's shoes, and be equally with him subject to the legal rights of the London and North Western, so that their *status* will be unaltered. With regard to the other questions, the London and North Western claim a landowner's general *locus standi* on account of our crossing their line, but they ought to be limited to asking for provisions to ensure the proper crossing of their lines.

Mr. RICKARDS: We have always considered a railway company, if landowners, entitled to the ordinary privileges of landowners as regards *locus standi*.

Worsley: They might have been entitled to a landowner's *locus standi*, against the original bill, but they are not so entitled against an extension of time bill. In similar cases to this you have only granted a limited *locus standi*. (*Waterford New Ross & Wexford Junction Railway Bill*, 1 Clifford & Rickards 56.)

Mr. RICKARDS: That is under S. O. 134, which relates to the use by one railway company of the railway stations or accommodations of another company.

Worsley: That is all we can do here. We cannot take away land; we only take an easement over it.

Mr. RICKARDS: You take it under the original bill, and if it had been the land of a private owner, interference with it would have given him a landowner's *locus standi*.

Pope: I believe it is only an easement that we have at the point in question.

Worsley: With regard to the Kingsbury and Harrow we come for a mere extension of time, and the petitioners are not entitled to be heard on that point. As to the mode of crossing their line by the Kingsbury and Harrow, the petitioners may have a *locus standi*; but they seek to use this technical right for the purpose of again discussing the whole policy of the bill. All that is *res judicata*.

Pope: I admit that I am not entitled to be heard to re-open the question of the policy of making the line between Kingsbury and Harrow, but I am entitled to be heard to argue that the time for constructing it ought on no ground to be extended.

The CHAIRMAN: Mr. Pope would argue that by the extension of those powers there is an alteration in the condition of things.

Worsley: That is not alleged in the petition. Wherever a *locus standi* has been given to petitioners against an extension of time bill special circumstances have been alleged. (*Drayton*

Junction Bill, 1 Clifford & Stephens 28; *Wrexham, Mold, and Connah's Quay Bill*, *Ib.*, 34; *Musselburgh and Dalkeith Water Bill*, 1 Clifford & Rickards 106.)

The CHAIRMAN (after deliberation): We propose to give the London and North Western Company a *locus standi* as against such portion of the bill as proposes to extend the time for making the Kingsbury and Harrow line.

Pope: It should be against so much of the 23rd and 24th clauses as relates to the extension of time for the compulsory taking of lands and the execution of works of the Kingsbury and Harrow line, and so much of the preamble as relates thereto.

The CHAIRMAN: Yes; we *Allow* the *locus standi* as Mr. Pope now suggests, and *Disallow* it as to other points.

Agent for Bill, *Roberts*.

Agents for Petitioners, *Burchells*.

MIDLAND RAILWAY (FURTHER POWERS) BILL.

Petition of (1) THOMAS WILLIAM TATTON and OTHERS; (2) DEVISEES of THOMAS WORTHINGTON and OTHERS; (3) JOHN LAMBE and OTHERS.

14th March, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Railways—Authorised by former Acts, but not Constructed—Transfer of Original Powers—Further Transfer—Partial Abandonment—Inconsistent Allegations in Successive Acts—Landowners—Upon Line of Proposed Railways—Land not taken—Compulsory Powers—Cesser of—Penalty for Non-completion—Virtual Repeal of—Effect upon Landowners Considered.

Against a bill for partial abandonment of two lines of railway, and the transfer to one of two companies of the residue of the powers jointly conferred upon them by former Acts, various landowners sought a hearing on the ground that they were about to be deprived of railway facilities on which they had counted, and also because the powers of construction had originally been granted to a district railway company, and from it transferred to these two companies in 1876 upon allegations inconsistent with those put forward in the present bill:

Held, however, that, as in an ordinary case of abandonment, there was no special injury

arising from the extinction of the compulsory powers, upon which the petitioners could claim to be heard.

(*Per Cur.*) Landowners petitioning cannot raise the public question. The public have no *locus standi* against a railway bill. Their objections may be entertained by the House on the second reading, but not by the Committee upon the bill.

In 1873 and 1874, certain railways were authorised to be constructed by the Manchester South District railway company. By the Midland Railway (Further Powers) Act, 1876, these powers were transferred to and vested in the joint committee of the Manchester, Sheffield, and Lincolnshire, and Midland railway companies. The bill now proposed to authorise the abandonment of the larger portions of the railways so authorised, and the transfer of the existing powers as to the residue from the Sheffield and Midland joint committee to the Midland railway company solely, with power to the Great Northern company, in certain events, to obtain a joint interest in the undertaking. The petitioners, as landowners, objected to the further transfer and abandonment.

The *locus standi* of T. W. Tatton and others was objected to, because (1) no sufficient ground according to practice was alleged for their being heard in opposition to the proposed transfer of powers; (2) the fact that the line of the railways to be abandoned traversed the petitioners' lands constituted no claim; (3) there were no existing rights under agreement, or otherwise, which would be prejudicially affected; (4) petitioners were only interested in the same way as the general body of landowners, and had no right to represent them.

The *locus standi* of the devisees of the late T. Worthington and others, and the *locus standi* of J. Lambe and others, were objected to on similar grounds, with the addition in the case of the last-mentioned petitioners of an objection, that the service of notices of the proposed abandonment on the petitioners gave them no additional claim to oppose the bill.

Pembroke Stephens (for petitioners (1) and (2)): These cases are similar, and may be argued together. The railways authorised by the Acts of 1873 and 1874 pass for no inconsiderable extent through the estates of the petitioners—in one case for a distance of nearly two miles. By three successive Acts of Parliament these lines have been opposed; the transfer of the powers effected in 1876 is stated in the preamble of that Act to have been upon the ground that the rail-

ways could be more economically constructed, and worked by the Sheffield and Midland company, in connection with their own undertakings; and the usual penalty clause was inserted to insure the completion of those railways. The recital contained in the bill of this year, that it is expedient that the powers should be exercised by only one of these companies, and that a large portion of the railways in question should be abandoned, is in direct conflict with the allegations made in the preamble of the Act of 1876. Moreover, the companies, while releasing themselves from the obligation to construct the railways as a whole, retain one small portion for purposes distinct from those contemplated by Parliament in 1873, when the original Act was passed. Whether regard is had to the loss we suffer in the non-construction of the railways, or to the fact that when this bill is passed we shall no longer obtain whatever benefits we might have been entitled to under the penalty clause, our position is distinctly altered for the worse.

Mr. RICKARDS: It is the ordinary case of abandonment; your lands might have been taken for the purpose of a railway, but they have not been?

Stephens: It is hardly a case of simple abandonment. It is one which has not arisen before, and may be called a case of compound abandonment, third parties having come in who had nothing to do with the promotion of the original Acts, and obtained the transfer to themselves of powers over the district, upon representations which, if the preamble of the present bill is to be believed, were unfounded. In volunteering in 1876 to take upon themselves the construction of this line, they have removed the case out of the ordinary principle of abandonment. The landowner is no longer in the position of a man whose land has been taken by a specific company for a specific purpose which cannot from circumstances be carried out; he finds himself in the position of having his land scrambled for by different companies. In this case, not only was the land taken by one set of promoters in 1873-4—transferred to other promoters in 1876—and now proposed to be re-transferred to one of the same parties in 1877, but (by clause 7) power is taken to admit an entirely new partner—i.e., the Great Northern company—hereafter. Can it be right that a landowner should be disturbed in the enjoyment of his property merely that railway companies may make convenient arrangements among themselves? Parliament must surely require that some definite public object should be put forward and proved, before they over-ride the rights of the owners of property. And if it turns

out that the reason assigned for passing the Act is not or ceases to be the true one, the landowner surely has a right to come forward, and say—"these powers over my lands were granted in error, and the promoters have not disclosed to Parliament what was really in their minds?" Rights acquired by railway companies ought to be obtained *bonâ fide*, or not at all, and if abandonment becomes inevitable, it ought equally to be sought *bonâ fide*. For it may very well be that, under a partial-abandonment bill, powers may be retained over a special piece of property, as to which the railway company would have failed to obtain any powers whatever if these had not been coupled with a much larger scheme. If landowners have no right to complain under such circumstances, in parts of the country where railways are numerous, their lands may be made the mere footfalls of railway undertakings.

Mr. RICKARDS: You do not suggest any injury to the landowners?

Stephens: Part of the consideration on which they originally parted with their land was that the railway should be made.

The CHAIRMAN: But you have not parted with your land?

Stephens: No; but it was the condition under which I became liable to part with it.

Mr. RICKARDS: They offer now to give up their power to take your land; you must suggest some grievance that would result to you from that?

Stephens: Our position is altered for the worse. If our lands had been taken, I should now be told, as in *Lord Lyttelton's* case, that we were creditors and had no locus; but our rights are intact, and the railway companies having dealt with us according to one set of representations, now introduce a different state of things to our detriment.

The CHAIRMAN: The railway companies have power to take your land. If anything has been done under that power, a contract has been entered into and your rights are defined under it. If nothing has been done, how can you contend that any damage has been inflicted upon you?

Stephens: Whatever has been done has been done by the railway companies and not by us. They first propounded to Parliament a scheme that was useful, and under colour of it, got powers over our lands. They then have kept just as much as suited them, and abandoned the remainder. Meanwhile compulsory powers have been suspended over our heads for years. We have been prevented from dealing with the property, and in the long run by the abandonment of the line we are deprived of the only thing which originally led to the granting of those powers.

The CHAIRMAN: When the abandonment bill has

passed, the company will no longer have power to take your land, and you will be a free agent?

Stephens: But meanwhile I have been deprived of the power of dealing with my land since 1873, and I shall be deprived by the bill of any power of getting compensation from the deposit-money. To refuse landowners a locus in such circumstances will be a direct inducement to railway companies to obtain powers over estates and then to toss these about from one hand to the other.

Tahourdin (for petitioners 3): My clients are owners, lessees, and occupiers of property in, and inhabitants of, parishes and places traversed by the line proposed to be abandoned.

Cripps, Q.C. (for promoters): I am told there is only one landowner among those petitioners whose lands could have been taken.

Tahourdin: We do not rely merely upon that; we also raise the public question.

Mr. RICKARDS: The public have no *locus standi* against a railway bill. Their objections may be entertained by the House of Commons upon the second reading, but individuals professing to represent the public cannot be heard before the Committee on the bill.

Tahourdin: The public necessity for these railways has greatly increased since the Acts of 1873 and 1874 were passed; and but for the belief entertained at the time that these lines would be made, the transfer to the Midland and Sheffield committee would never have been sanctioned in 1876, or the Manchester South district company would never have been relieved from the liability to forfeiture of the deposit. We, as property owners and residents in the district, will be seriously injured by the abandonment of these lines, as we shall be cut off from direct and independent access to Manchester, Macclesfield, and other important points.

The CHAIRMAN: Granting the accuracy of all those allegations, how do they give you a locus?

Tahourdin: Any landowner upon the line surely has a right to be heard against an abandonment bill on the ground of the disadvantage to the district.

The CHAIRMAN: For all that appears in the petition, every one of the petitioners might be resident in some parish not touched by the original Acts or by the bill.

Tahourdin: We state expressly that some of the petitioners have been served with notices of abandonment under the S. O.

Mr. RICKARDS: That does not give the petitioners a *locus standi*.

Tahourdin: We had a reasonable expectation of deriving advantage from the construction of the railway, and of that advantage we are now to be deprived.

Mr. RICKARDS: Can you show any case in which persons professing to represent the local public have been allowed a hearing?

Tahourdin: I ask you to make a precedent, if one does not already exist. There is a natural expectation of advantage from the making of a railway which is entirely apart from the value of the land actually taken. The mere anticipation that a district will shortly be served by a railway causes an increase in the value of the property; and similarly the withdrawal of railway facilities, which have been counted upon, leads to a depreciation in the value of the property. The benefit that a man can obtain by the taking of his property for railway purposes, even if he is handsomely paid for it, is capable of being easily calculated, but the general benefit to a district from its acquiring a residential character, and from the land round about becoming capable of being let at higher rates is enormous. Hence, a far greater injury is inflicted upon landowners by the withdrawal of a railway once promised than by the construction of the line, even though it may involve in some cases taking property compulsorily at a high figure. I pray in aid also the arguments of Mr. Stephens.

The CHAIRMAN: You seem to have adduced every argument that is capable of being put forward; but I think the case is scarcely arguable.

Cripps, Q.C., was not called upon to reply.

Locus standi Disallowed.

Agents for Petitioners (1), *Martin & Leslie*.

Agents for Petitioners (2), *Dyson & Co.*

Agents for Petitioners (3), *Tahourdin & Hargreaves*.

Petition of (4) the WITHINGTON LOCAL BOARD.

Railway Companies—Transfer of Powers, and Partial Abandonment—Local Board—Established since Railway Authorised—Interference with Highways—Protective Clauses—Nunc pro tunc.

A local board, established since a railway was originally authorised, sought to be heard against a bill for abandoning part of the authorised line, and transferring the powers as to the remainder to a new company, on the ground that circumstances had changed, and that it was desirable to avoid interference with important thoroughfares:

Held, however, that the provisions of the bill as to abandonment could not affect the thoroughfares, whilst as to those powers which were continued and transferred, the petitioners were in effect complaining of past legislation.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of the petitioners were taken, or streets, roads, &c., of theirs interfered with; (2) the petition had reference wholly to past legislation, and to powers granted many years ago which were wholly inapplicable to the proposed transfer; (3) no ground for a hearing was shown according to practice.

Pembroke Stephens (for petitioners): We were constituted in 1876, and are the road and sewer authority within the district, and under the bill the promoters will have powers to interfere with important thoroughfares under our jurisdiction. In an important district forming a suburb of Manchester, all obstructions of this kind ought, if possible, to be avoided. The petitioners had no opportunity of securing the insertion of such protective clauses as are usual and necessary, for they were only established in 1876.

Cripps, Q.C. (for promoters): As to works, no alteration whatever is made by this bill.

The CHAIRMAN: I do not see how an abandonment bill can affect the highways of this district.

Stephens: The question arises, not as regards the abandoned portion, but as regards the powers which are retained. These were, no doubt, obtained originally in 1873, but they were given behind the backs of my clients.

Mr. RICKARDS: In 1873 they had no backs?

Stephens: In the original Act powers for the protection of Manchester were inserted, and as our district adjoins Manchester, it is reasonable to suppose that similar clauses would have been inserted for us if we had been in a position to ask for them.

The CHAIRMAN: If the works are the same as were then authorised, how can you, who have come into existence subsequently, claim a *locus* against this bill?

Stephens: The power as to works already authorised, but not made, may require to be guarded by proper provisions, though we were not in existence when the authority to construct was given. The circumstances may no longer be the same.

Mr. RICKARDS: You want a *locus standi nunc pro tunc*?

Stephens: If we had been in existence three years ago these powers might never have been

granted at all. They have not hitherto been exercised, and we are still in time to prevent the mischief which might be done if the works were carried out on the present lines.

Cripps, Q.C., was not called upon to reply.

Locus standi Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Sherwood & Co.*

MIDLAND RAILWAY (NEW WORKS) BILL.

Petition of (1) Messrs. CROFT, BUTTERFIELD, and WILKINSON.

12th March, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway — Diversion of Highway — Consent of Local Board — Private Interests — Interference with Access to Manufacturing Premises — Alteration of Level of Road — Level Crossing Replaced by Bridge — Former Legislation — Petitioners' Status not Materially Altered by Present Bill — Quantum of Injury considered.

In cases not involving a landowner's *locus standi* the injury complained of by petitioners must, to justify a hearing, be of more than a technical character. The bill proposed (*inter alia*) to carry a road over the company's railway by means of a bridge instead of a level crossing. The petitioners were manufacturers whose business involved the carriage of heavy goods to and from their place of business, the access to which was along the road in question. But it appeared that similar though not identical powers had been obtained by the promoters in 1873, and the issue was ruled by the Court to be, whether the petitioners sustained any additional injury to that created by the Act of 1873, which they had not opposed. As the plans showed that the gradients of the road authorised in 1873 and of that under the bill were the same, and that the increase of distance to the petitioners' works by the proposed road was a very few yards in one direction only, while there was a gain of a few yards in another direction :

Held, that this was not such an alteration for the worse in the status of the petitioners as entitled them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition is really directed only against the proposed confirmation of the agreement referred to in clause 22 of the bill; (2) the Keighley Road and Dalton Lane referred to in the petition and in the Act of 1873 are public highways under the superintendence and control of the Keighley local board of health, who are consenting parties to the bill, and by whom the rights and interests of the petitioners and other inhabitants are represented; (3) they have no such right or interest in the road and lane as to entitle them to be heard; (4) the situation of the petitioners' works and the various circumstances and proceedings connected therewith set forth in the petition, and their apprehensions as to the effects of the proposed alterations do not entitle them to be heard according to practice; (5) the bill does not contain any provisions relating to or affecting the powers of former Acts, under which it is suggested by the petition that some of the petitioners' property might be taken or interfered with; (6) if the petitioners sustain any injury by reason of the works authorized by the bill, they are entitled to compensation at law.

Richards, Q.C. (for petitioners): The petitioners are machine makers in Keighley, and the main object of the bill is to confirm by clause 22 an agreement made between the promoters and the local board of that place. We allege that the confirmation of that agreement will prejudice us. We are owners of a piece of land in Keighley, on which we have erected extensive tool and other works, and an iron foundry, and this piece of land adjoins the line of the Midland railway, lying between the railway and a high road called Dalton Lane. This lane forms the only access to our works. The bill proposes to turn it into a *cul de sac*, by stopping up one end. Our business necessitates our bringing a large quantity of heavy goods to our works, and this site was specially selected as affording proper facilities for moving our machines to and from our works. The promoters have been trying for some time past to substitute a bridge for carrying the Keighley and Bradford road over their railway, instead of the present level crossing. They took powers under the Act of 1873 to alter the level of this road; but provisions were inserted in that Act to prevent a steeper gradient than 1 in 30 at the point where Dalton Lane joins this road, without first obtaining the consent of the Keighley local board, and

to compel them to round off the corners at the points of junction. We did not oppose the Act of 1873, because we anticipated that it would be necessary for the promoters to purchase a portion of our property, and we should then be able to obtain proper compensation. This is the substitution of another plan for the plan authorised in 1873, the company and the local board on this occasion acting together, and under it we shall get no compensation, and therefore come to Parliament for protection.

The CHAIRMAN: You must show that any alteration from what was authorised in 1873 will prejudicially affect you. We must assume that what was authorised in 1873 was acquiesced in.

Richards: In 1873 the promoters obtained powers to carry out a plan, which they now abandon, and instead of which they propose to do something different. At any rate, our non-opposition in 1873 ought not to prejudice us here. (*Lancashire and Yorkshire Railway Bill*, 2 Clifford & Stephens 173.)

Mr. RICKARDS: If you can show that the difference between the present plan and that of 1873 will injuriously affect you, you will be entitled to a *locus standi*.

Venables, Q.O. (for promoters): The gradient will be the same as that of the road in 1873.

Richards: The plan now proposed is prejudicial to us, but it is not necessary for us to show that what is now proposed is more prejudicial than what was proposed in 1873, and has since been abandoned. The Bill alters our existing situation for the worse, because under this bill the road may be dealt with in such a way that we shall be entitled to no compensation as we should have been in 1873. *The Burnham Tidal Harbour case* (1 Clifford & Rickards 206) is in point here. There is a palpable injury to us considering the nature of our trade in giving us a road of this inclination quite apart from our public rights in the road, which are perhaps represented by the local board. The distance we shall be compelled by the altered road to go will also be greater.

Venables (in reply): The sole question here is a comparison of the effect of this bill upon the interests of the petitioners with the effect of the legislation of 1873.

The CHAIRMAN: We are with you upon that point.

Venables: The petitioners do not anywhere allege in their petition that the new road would be worse for them than the road of 1873, or that they will be worse off than they would have been under the Act of 1873, but only that they will be worse off than they are now.

Mr. RICKARDS: They say that the proposed

diversion of the road will not afford them such an access to their works as is essential for their business. That amounts to an allegation that the diversion will prejudice them.

The CHAIRMAN: The only point, though it may be a technical one, is this alleged increase in the length of the road.

Venables: It shortens the distance five yards going in one direction, and it lengthens it five yards going in the other, but they do not complain of that in the petition.

Mr. RICKARDS: There is the general allegation that it is inconvenient. This road is the only access to the petitioners' place of business. Is the distance to the nearest station increased?

Venables: In going to the station the increase is less than ten yards in a distance of a third to half a mile. The petitioners submitted to a substitution of a gradient for a level in 1873.

Mr. RICKARDS: The increase in distance is not a serious thing. The only question is whether it is enough to hang a *locus standi* on.

Venables: They have an equivalent, because they get the distance proportionately shortened the other way.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, Rees.

Petition of (2) the METROPOLITAN BOARD OF WORKS.

Railway Company—Powers to Purchase Lands—Metropolitan Board of Works—Jurisdiction of, Over Lands Sought to be Purchased—Roads and Sewers not Interfered with—Metropolis Management and Buildings Act, 1855—Railway Buildings Specially Exempted from Control of Board—Public Nuisance—Exhibition of Placards and Advertisements on Company's Buildings—Claim to Protect Public in Matter of—Interference with Jurisdiction of Board not sufficient.

The company took under the bill ordinary powers for the purchase of lands within the metropolitan area, and the Metropolitan board of works claimed to be heard against the bill as interfering with their jurisdiction. The bill authorised no interference with any roads or sewers, but the petitioners contended that it would oust their jurisdiction for purposes of future improvements. They also put forward a claim

to be heard in order to obtain the insertion of clauses to prevent the company from allowing placards and advertisements to be exhibited on their buildings, such exhibition being a public nuisance which, as the petitioners alleged, they were the proper parties to suppress. It was pointed out on behalf of the promoters, that railway buildings were specially exempted from the control of the board by existing Acts, and that the bill contemplated no further interference with the authority of the board than was necessary upon every purchase of lands within the metropolitan area:

Held, that the mere purchase of lands within the metropolitan area by a railway company was not such an interference with the powers of the Metropolitan board of works as to confer on them a right to be heard.

The *locus standi* of the petitioners was objected to, because (1) they do not allege that they have any interest in, or jurisdiction over, the lands, houses, and buildings of railway companies; (2) the powers sought by the bill do not entitle them to be heard to obtain the insertion of the provisions asked for by them; (3) no sewers under their authority are altered or interfered with; (4) they have no power or jurisdiction in respect of the exhibiting by the company upon buildings belonging to them, of any notices or advertisements; (5) neither they nor the inhabitants of the metropolis are injuriously affected by the bill in such a manner as to entitle them to a hearing under S. O. 134; (6) the petition discloses no ground for a hearing according to practice.

O'Hara (for petitioners): We oppose so much of the bill as refers to the metropolis. Under 18 & 19 Vict., c. 120, we have authority over the streets and sewers, and powers to regulate the lines of houses and buildings. Under a subsequent Act of the same year, the Metropolis Building Act, cap. 122, certain buildings were exempted from our regulation, and among them railway buildings, that matter being left to be dealt with by the Committee to whom the railway bill was referred. In this case, too, we ask to go before the Committee to be heard by them. The promoters take power under the bill to acquire lands in the parish of St. Pancras now in the hands of numerous owners. We have a right now over those lands, so that, whenever any of them change hands, we can interfere and set back the line of houses, and can also regu-

late all existing or new roads laid out for building purposes.

Mr. RICKARDS: Wherever streets existed and property was to be taken abutting upon those streets, according to your argument, the Metropolitan board would have a *locus standi*?

O'Hara: Yes.

The CHAIRMAN: Your argument is, because this bill would take these houses out of your jurisdiction, therefore you have a *locus standi*?

O'Hara: Yes; that is one argument. We were heard against the Midland Additional Powers Act of 1875 and 1876, to insist upon a greater width of bridges crossing roads than was proposed by the company. The board also appeared against the Great Western Railway Bill of 1876, and have continuously represented the interests of the public before committees.

Venables, Q.C. (for promoters): Their *locus standi* could not have been opposed. They must have had a right to be heard on other grounds.

O'Hara: Then we further ask to be heard to put a stop to the nuisance and disfigurement caused by the display of notices, placards, and advertisements on the company's buildings. In the Metropolitan District Act, 1875, and in a number of railway bills in 1876, we obtained clauses to prevent this public nuisance, from which we alone can protect the public.

Venables (in reply): In the Midland Additional Powers Act the company took power to shut up no less than 26 streets, and in the Great Western Railway Bill the company proposed to stop up existing roads. We take no power to interfere with any road or sewer, or any interest represented by the board, but only the ordinary power to purchase land. The board have no more interest here than they would have in an ordinary purchase and sale of land between two private persons. The board cannot have been heard to get clauses inserted in former bills to prevent the exhibition of placards, but having the right to appear on other grounds, they got those clauses inserted.

Mr. RICKARDS: Their claim seems to go to the extent that any other municipal body or improvement commissioners having the control of the streets would have a *locus standi* in all cases of purchase of land by a railway company on the same grounds.

O'Hara: The Metropolitan board of works are on a different footing to all other municipalities.

Venables: They do not allege injury, but suggest benefit which we might confer upon them.

The CHAIRMAN: They suggest improvement, and they claim to have jurisdiction.

Venables: Yes. Parliament having decided that they have no jurisdiction over us *quod* buildings, they now seek to be heard against that established principle.

The CHAIRMAN: In this case the *locus standi* of the Metropolitan Board of Works must be *Disallowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

NEWCASTLE-UNDER-LYME BOROUGH EXTENSION AND IMPROVEMENT BILL.

Petitions of (1) INHABITANTS OF WOLSTANTON; and (2) OWNERS, LESSEES, AND OCCUPIERS OF WOLSTANTON.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HERNY DRUMMOND WOLFF, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Extension of Borough Boundary—Reconstitution of Parishes, &c.—Part of adjacent Parish included in Borough—Rateable area of Parish diminished, &c.—Representation of Parish by Board of Guardians—Rural Sanitary Authority—Inhabitants—Owners, &c.—Value of Property affected—Distinct Interests—How far necessary to be alleged—Criminal Administration, &c.—Poor Law Amendment Act, 1834—Public Health Act, 1875.

An extension of the borough boundary of Newcastle-under-Lyme was proposed by the bill, which provided for the annexation of a part of the neighbouring parish of Wolstanton, and proposed to merge such included portion in the parish of Newcastle-under-Lyme. The petitioners were inhabitants, in vestry assembled, of the parish of Wolstanton, and owners, lessees and occupiers in that part of Wolstanton which would be annexed under the bill. The board of guardians of the union of which the parish of Wolstanton now formed part, who were the rural sanitary authority of the district, also petitioned, and the promoters contended that the petitioners were represented by this board on all matters in which their interests were affected by the bill with one exception, as to which they conceded a limited *locus standi*. The bill, however,

provided for the merger of the portion of the petitioners' parish for all "civil parochial purposes whatever," and it was pointed out that on many questions the interests of the petitioners were distinct from those of the guardians, whose authority was not co-extensive with the subject-matter of the bill:

Held, that the interests of the inhabitants were sufficiently distinct from those of the guardians to entitle them to a separate hearing, and that the owners, &c., who petitioned, were not represented by the board of guardians, and were also entitled to be heard.

The *locus standi* of (1) the inhabitants of Wolstanton was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2) the guardians of the poor, who are also the rural sanitary authority of the district, have petitioned, and the petitioners are represented by them; (3) they allege no reason and have no interest to entitle them to be heard according to practice. The *locus standi* of (2) owners, &c., of Wolstanton was objected to on similar grounds, and also because the petition was signed by only a small number of owners, &c., within that portion of Wolstanton which was proposed by the bill to be included within the parish and borough of Newcastle-under-Lyme.

Bidder, Q.C. (for petitioners (1) and (2)): I will take both petitions together. Clause 7 of the bill, besides extending the borough, provides that "for all civil parochial purposes whatever the extended borough shall constitute one parish, under the name of the parish of Newcastle-under-Lyme." We may be represented by the guardians of the poor, for some purposes, but not for all the purposes the bill interferes with. We allege in our petition that it is proposed by the bill to take a large proportion from the rateable value of our parish without rendering to it, or the remainder of it, any sufficient compensation for this loss. The interests of the inhabitants are quite distinct from the interests of the guardians, and the doctrine of representation does not apply where both parties are opponents, as is the case here.

Pope, Q.C. (for promoters): Yes; it was held in the *King's Lynn Gas Bill* (2 Clifford & Stephens 5) that the inhabitants were represented by the corporation.

Mr. RICKARDS: Does this bill, as far as it extends to the borough, affect any other part of the union which the guardians represent except Wolstanton?

Bidder : I think not.

Mr. RICKARDS : So that the petitions of the guardians, and of the inhabitants in vestry assembled, both mainly relate to the parish of Wolstanton ?

Bidder : Yes; and on all sanitary matters the inhabitants are represented by the guardians, but not on other questions. Clause 7 of the bill concerns only the ratepayers, and not the guardians, to whom it does not signify whether the rateable area of the parish is smaller or greater. In the matter of streets and roads, the vestry are the highway authority. The guardians, again, have nothing to do with burials or school boards, and the Burials Act, 1854, is among those incorporated with the bill.

The CHAIRMAN : It seems to me, for instance, that the guardians cannot represent the inhabitants as against clause 10, which extends the jurisdiction of the recorder and clerk of the peace of the borough to the extended borough.

Bidder : The *King's Lynn Gas Bill* was a bill promoted by a trading company and was less extensive than the present bill, so that for its purposes the corporation might well represent the inhabitants. The *Chesterfield Borough Extension Bill* (1 Clifford & Rickards 211) is in my favour. As to petition (2) the owners, lessees, and occupiers who petition, live in the piece of the parish which it is proposed to annex.

The CHAIRMAN : You do not mean to contend, Mr. Pope, that the guardians represent owners, lessees, and occupiers ?

Pope : Yes. The principal point we desire to raise, is, whether under the Public Health Act of 1875, boards of guardians do not represent the inhabitants for all purposes, and whether they do not stand in the same position as local boards or sanitary authorities. The petitioners do not allege any special grievance apart from those in which they are represented by the board of guardians.

Bidder : The Public Health Act has nothing to do with police or with judicial administration.

Pope : We are willing to concede a limited *locus* against clause 10 which affects judicial administration.

Bidder : That is not enough. With regard to the insufficiency of the number of owners, &c., who have signed, all but five have done so. But if only one owner had signed he would have been entitled to be heard as to the way the rates affect his property.

Pope (in reply) : Both sets of petitioners are represented by the board of guardians, and according to the *King's Lynn* case the doctrine of representation applies equally in the opposition as in the promotion of bills. The board of guardians in their petition claim the right under

the Poor Law Amendment Acts and the Public Health Act of 1875 to determine the arrangement of parishes and districts in their union, to make such alterations in the constitution of the poor law unions and sanitary districts as may from time to time become necessary, to deal with the question of rating as affected by the bill, and in fact they claim to be the proper parties to settle all the various questions which the bill touches upon except perhaps criminal jurisdiction, and on that point we are willing to concede a *locus* to the petitioners, because they do object in their petition to be transferred from the jurisdiction of the county justices to that of the recorder; but on no other points do they allege a separate interest, and on all they are represented by the guardians.

Mr. RICKARDS : By clause 7 of the bill, as the petitioners point out, part of their parish will become the parish of Newcastle-under-Lyme, and it is a strong thing to say that the parish is not to be heard upon the question whether it should be annexed or not, apart from what the guardians may have to say to it.

The CHAIRMAN : The *locus standi* of both Petitioners is Allowed.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agent for Petitioners, Tyrrell.

NEWPORT (MONMOUTHSHIRE) GAS BILL.

Petition of the CORPORATION of NEWPORT.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir H. DRUMMOND WOLFF, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—New Works—Proposed Site—Near Lands of Corporation—Borough “Injuri-ously Affected” — Allegation Insufficient—Rights of Corporation as Landowners—Lands not taken—Injuri-ously Affected—Railway Works and Gasworks, how far Distinguishable—S. O. 15—Dwelling Houses within 300 yards Limit—Lands’ Clauses Act, 1845, Section 68—Compensation—Practice—Price of Gas—Not dealt with by Bill—Question as to, cannot be raised in Argument.

Against a bill empowering a company to purchase lands for the erection of gasworks, the corporation, within the limits of whose borough the gasworks were proposed to be erected, claimed a *locus standi*, first, as the municipal authority, and hence the proper protectors

of the interests of the borough; secondly, as landowners whose property was injuriously affected. Beyond the general allegation, no special injury to the borough was shown by the petition. With regard to the claim of the corporation as landowners, it was urged that, although none of their land was actually taken, the value of their adjacent property would be diminished for the building purposes to which it was in process of adaptation; and that landowners affected by gasworks were placed by the S. O. on a different footing from those injuriously affected by railways. The promoters replied that the lands in question were marsh lands liable to periodical floodings, and that the S. O. related not to lands generally, but to buildings, and the petitioners had no dwelling house within the 300 yards limit prescribed by S. O. 15:

Held that the petitioners could not be heard on either of the grounds put forward.

The petitioners also claimed a hearing either as representing public interests, or as landowners, upon the general questions of the price of gas, capital of the company, &c.; the bill, however, contained no provisions on these points:

(*Per Cur.*) "Petitioners cannot raise the question of the price of gas upon a bill strictly limited in its scope to taking lands."

The *locus standi* of the petitioners was objected to, because (1) they are not owners, leasees, or occupiers of any land sought to be taken, or contiguous thereto; their nearest land is 110 yards distant, and is frequently flooded, so that their nearest land applicable for building is 330 yards distant from the proposed site; (2) they are not, nor do they claim to be, owners, &c., of any dwelling house within 300 yards; (3) so much of their petition as relates to rates and charges is irrelevant to the bill; (4) they have no ground for a hearing according to practice.

Pembroke Stephens (for petitioners): We are the municipal authority for the town and borough of Newport, within which the gasworks are proposed to be erected. We allege that the borough will be injuriously affected by the bill, and that allegation not being traversed, we claim to be

heard for the protection of the interests of the borough.

Mr. RICKARDS: That is merely a general allegation; but the allegations of the petition stating the mode in which you would be injuriously affected, are met by the objections.

Pembroke Stephens: We further claim a *locus standi* as landowners. We own the estate called the Newport Marshes, which are contiguous to the lands sought to be taken for the gasworks, and this land we have already begun to ballast and build upon, and intend continuously to devote to building purposes as the land is raised from time to time. Although it is true that in railway bills a mere injurious affecting of lands, without actual taking, will not confer on a landowner a right to be heard, a different principle is by the S. O. specially introduced in the case of gas and sewage bills.

Mr. RICKARDS: Are you within the 300 yards limit prescribed by S. O. 15?

Michael (for promoters): Although part of their estate comes within 300 yards, they have no dwelling house within that distance, and therefore we did not serve notice upon them under that S. O.

Pembroke Stephens: Admitting that statement, the S. O. nevertheless proves that in principle landowners stand on a different footing with regard to injurious consequences resulting to them from gas bills, from what they do in other cases. In the case of a railway bill, the 68th section of the Lands' Clauses Act, 1845, is incorporated, and the landowner gets compensation under its provisions. Here that section is expressly excluded; therefore, the principle on which the *St. Mary Church Bill*, *Petition of Sir L. Palk* (1 Clifford & Stephens 55) was decided, does not apply. Lastly, considering the powers conferred by the Public Health Act, 1875, on corporations of purchasing gasworks, &c., and the fact that the recent extension of the borough has introduced or may introduce complications into our relations with the gas company, we also claim to be heard on the usual questions of capital, uniform price of gas within the borough, and so forth.

Mr. RICKARDS: Does this bill affect the price?

Michael: No. Having already power under a former Act to acquire land by agreement, and having failed to come to an agreement, we ask power to take this land, and that is the whole object of the bill.

The CHAIRMAN: It is quite settled that you cannot raise the question of price upon a bill strictly limited in its scope to taking lands, as is the case here. We cannot deal with the corporation in any other capacity than as landowners.

Pembroke Stephens: On the question of our right to be heard as landowners, although our property is not actually touched or taken, I refer to the *Lancashire and Yorkshire Railway (New Works) Bill* (2 Clifford & Stephens, 178), and the *Lancashire and Yorkshire Railway Bill on the Petition of Thomas Brocklebank* (1 Clifford & Rickards 285). It has been sometimes held also that injury and not distance is the proper test.

Michael (in reply): As to the 68th section of the Lands Clauses Act, compensation is not provided by that section, but merely the way in which it is to be arrived at. If the corporation are injured, they will have their Common Law remedy, of which the bill does not in any way deprive them.

The CHAIRMAN: We need not trouble you further.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Rees.*

NORTH BRITISH AND ARBROATH AND MONTROSE RAILWAY BILL.

Petitions of (1) THE RAILWAY CARRIAGE AND WAGON BUILDERS' ASSOCIATION; and (2) THE MANUFACTURERS OF LOCOMOTIVE ENGINES.

8th March, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Competition — Railway Companies — Working Agreement — Rolling Stock — Special power for one Company to supply the other with — Adjoining Lines — Traders and Manufacturers — Apprehended Injury to Trade by Bill — Creation of Monopoly in Lands of Railway Companies — Test Case — Decision to govern other similar cases — Powers sought ultra vires — Jurisdiction of Court of Equity — Alleged attempt to oust — Railway Company seeking to become Traders — Competition too remote — Public Policy — Question raised, one of — S.O. 156 and 162.

A railway company sought power under a special Act to work the railways of another company, and for that purpose to supply rolling-stock for the traffic of both railways. The bill was opposed on the ground of competition by two sets of petitioners, who represented the manufacturers of loco-

tives and other rolling-stock throughout the kingdom. The petitioners contended that the power sought under the bill would enable the promoters to become traders, which was in direct contravention of the spirit of the Acts under which they were incorporated, and a case was cited in which the Court of Chancery had restrained a railway company from similarly acting *ultra vires*. The present bill, they complained, would enable the promoters to disregard the principle there asserted, and oust the jurisdiction of the Court, while at the same time it would enable railway companies to compete on a superior footing with them, to the ultimate ruin of the private trade of which they were members. It was answered on behalf of the promoters that the powers sought were to extend only to the supply of rolling-stock by one company to the other for the purposes of the working agreement between them, and inasmuch as all railways could obtain powers to manufacture their own rolling-stock, and were already at liberty to procure their stock from foreign to the exclusion of English markets, no fresh monopoly would be created in the hands of the railway companies:

Held, that the competition to be apprehended under the bill was not of such a nature as to entitle the petitioners to a *locus standi*, but that the question was rather one for public legislation.

The bill provided for the working of the North British and Arbroath and Montrose railway by the North British company, and in conjunction with the working powers to be given to the latter over the former company's lines, clause 7 conferred a special power on the North British company for "the supply of any rolling or working stock, and of officers and servants for the conduct of the traffic of the railways." There were a number of bills for conferring similar powers on railway companies before Parliament in this session, and this was a test case to determine the rights of manufacturers to prevent this species of competition.

The *locus standi* of (1) the Railway Carriage and Wagon Builders' association was objected to, because (1) the association as such has no right to be heard, being merely an incorporated

society consisting of firms and private individuals, no one of whom is entitled to be heard according to the practice of Parliament; (2) the petition against the bill, if presented at all, should have been signed by the firms or individuals respectively; (3) the petition must be taken to be that of Albert Fry and J. Hutchings alone, they having no right to sign on behalf of other persons, and as single traders they are not entitled to be heard; (4) even if the petition is to be regarded as that of all the members of the association, the petitioners have no right to be heard; (5) the petition does not show, nor is it the fact, that any such competition between the petitioners and the North British railway company will result from the bill as to entitle the petitioners to be heard; (6) the petitioners are simply builders of railway carriages and working stock, and the bill will not in any way interfere with their continuing their trade as such; (7 and 8) if the effect of the bill is to authorise the North British railway company to supply or let carriages, &c., to the North British and Arbroath and Montrose company, the petitioners have no such exclusive rights in the manufacture of railway stock as to prevent such powers being conferred, and their case in no way differs from that of all other traders and manufacturers; (9) the petitioners would not suffer any greater injury than if all the railway companies in the kingdom were to manufacture their own rolling stock or obtain it from foreign countries; (10) they have no greater right to complain of competition being authorised in the hands of a company to be incorporated by Special Act of Parliament than under the Joint Stock Companies' Acts, and therefore the fact of the contemplated powers being obtained by Special Act gives them no additional right to be heard; (11) the decision of the Master of the Rolls referred to in the petition on the question of *ultra vires* has no bearing on the question of the petitioners' right to be heard; (12) the petitioners have not claimed a right to be heard against other bills promoted in the present Session, e.g., the *Lewes and East Grinstead Railway Bill*, conferring similar powers on railway companies to be newly incorporated, and they have no greater claim to be heard against conferring those powers upon companies already incorporated; (13 and 14) the provisions which are objected to are the usual powers contained in similar bills, and have been recognised and granted by Parliament for many years, and the petitioners do not disclose any such interest as entitles them to be heard.

The *locus standi* of (2) the manufacturers of locomotive engines was objected to on similar grounds.

Clerk, Q.C. (for promoters) stated that the technical point raised in the first paragraphs of the objections to the *locus standi* of the association would not be insisted on.

O'Hara (for both sets of petitioners): The working agreement between the North British and the North British, Arbroath, and Montrose companies, to which this bill gives effect, contains a provision against which we claim a right to be heard, as placing the North British company in direct competition with us on most favourable terms to themselves. Clause 7 of the bill contains the working agreement, and, besides incorporating the usual provisions of a working-agreement clause, which the Chairman of Committees in the House of Lords has inserted in his model bill, it adds words which are not found in the model bill, namely, "the supply of any rolling or working stock, and of officers and servants for the conduct of the traffic of the railways;" and, according to the opinion of counsel taken in the matter, those words may be construed to mean that company A may, without working the line of company B, under the usual power of agreement, let for hire or sell to company B such of their locomotives and wagons as they think fit. This is a departure from the general principle that a company can only carry out the objects for which it was originally incorporated, because it would enable them to become traders for the supply of rolling-stock. This principle was insisted on by the Master of the Rolls years ago in the case of the *Attorney-General v. Great Northern Railway Company*, 29 L.J. Chan. 794.

Mr. RICKARDS: It was determined that the Great Northern was acting *ultra vires*?

O'Hara: Yes.

Mr. RICKARDS: Is not that case rather an authority to show that the Court of Equity would give you a remedy in case the North British company attempted, without express statutory powers, to manufacture locomotive engines, or other rolling-stock for sale or hire, to the North British, Arbroath and Montrose company?

O'Hara: Yes; but this is an application to Parliament for power to oust the jurisdiction of the Court of Equity. There are twenty-eight or thirty bills before Parliament this Session containing similar powers to those contained in clause 7, and your decision in this case will govern them all. Although it is an undisputed fact that the companies are in the habit of manufacturing their own rolling-stock, the power now sought would put them on a very different footing as regards competition with us, because as the clause now stands we contend that the North British company would be authorised to

supply stock to the company, whether a working agreement were made or not. This bill is in violation of S.O. 156, enlarged by S.O. 162, which was passed for the protection of persons who object to the appropriation of a company's capital to other purposes than those for which it is incorporated; and as interested persons we have a right to go before the Committee to be heard in the matter. The result of this bill will be an absolute monopoly for railway companies in the manufacture of rolling-stock, because they will go on making this kind of agreement with one another until all rolling stock is supplied by railway companies to our entire exclusion. For our part we claim no exclusive right, but we object to their having a preferential right.

Mr. RICKARDS: The bill does not say "it shall be lawful for the North British company to manufacture and sell rolling-stock," but that the two companies may agree together for a supply by the one to the other of rolling-stock.

O'Hara: It comes to the same thing. With regard to our right to be heard on the question of competition, I refer to *Smethurst* (edition of 1876, p. 69), and the *Lancashire and Yorkshire and L. N. W. Railway Companies (Steamboats) Bill*, 2 Clifford & Stephens 59.

Clerk, Q.C. (in reply): The power asked for in this bill is not a power to enable railway companies to become general manufacturers of rolling-stock; it is simply limited to the power of supplying a particular line which is so immediately adjoining, and so completely a part of their own system (and in the case of all the other bills for similar powers before Parliament this Session it may be taken to be the same) that in every clause objected to by the petitioners there is inserted an accompanying power of agreeing for the working of the line. It is no general power to make and sell rolling stock, but a power to work the line, and in addition to supply stock for the working of that line. Can it be said that a line like the Arbroath and Montrose, that has power to purchase its stock where it likes, is to be precluded from obtaining its stock from a line that adjoins it and works it? The North British has already the power of manufacturing its own engines for its own purposes, and the fact that it seeks power by a Special Act to supply a line in conjunction with its own, and worked by itself with rolling stock, does not confer on any trader or association a right to be heard against that Special Act any more than against the clauses that gave it a right to manufacture its own engines. With regard to the possibility of the exclusion of the petitioners by such measures as this from the anticipated profits of their business, precisely the same thing might occur if the companies

never manufactured a single engine, because they might contract with foreign firms for the supply of their entire rolling-stock. If they came to Parliament to get a Special Act to raise capital to carry out such a contract, the petitioners, although they would be excluded by such a contract from all chance of supplying engines themselves, would have no *locus standi* to oppose the scheme any more than if such a contract had been come to under the general powers of the railway company. Although under S. O. 156 a railway company cannot acquire docks or steamboats without the favourable report of a Committee, it does not follow that persons dealing in similar commodities would have a right to be heard. If a railway company proposed to construct an hotel, hotel keepers, or the Licensed Victuallers' Association, could not be heard. This is a business which comes within the natural objects of a railway company, and for facilitating the working of their own and of neighbouring lines; and it is not enough for persons to come and say, "we do not like you to alienate your capital for such purposes as this;" there must be something in the nature of direct competition, which is not the case here. (*G.W.R. (Steamboats) Bill*, 2 Clifford and Stephens 111.)

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Disallowed*. I may add that the objections to this clause upon public grounds may form a very fit subject for the consideration of Parliament.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Martin & Leslie.*

NORTH BRITISH RAILWAY (No. 2) BILL.

Petition of (1) PROPRIETORS and LESSEES OF
LAND and INHABITANTS OF HELENSBURGH.

8th March, 1877.—(Before Mr. PEMBERTON, M.P.,
Chairman; Sir JOHN DUCKWORTH; Mr.
RICKARDS; and Mr. BONHAM-CARTER.)

*Representation—Inhabitants—Corporation also
Petitioning—Petitions not Identical—Distinct
Interests—Railway—Substitution of New for
Existing Line—Abandonment of Station—
Appropriation of Town Pier for Railway Pur-
poses—Amenity of Town Sacrificed—Injury
to Trade Apprehended—Owners, &c., of Land
to be taken compulsorily also Petitioning—
Right of Inhabitants to Separate Hearing.*

The bill (*inter alia*) empowered the promoters to abandon a portion of railway passing through the town of H., and the station at present in use in connection with it, and to substitute a new line traversing the town and terminating on the pier, where a station was to be erected. In order to carry out this object, the bill contained a clause confirming an agreement whereby the corporation were to sell to the promoters the pier and harbour of the town. The petitioners, who were 300 in number, and described themselves as proprietors of lands and houses, traders, shopkeepers, and other inhabitants, claimed to be heard to oppose these changes on the ground that the bill would deprive them of the advantages they now possessed from the use of the existing line and station, and that the town would be disfigured, and property near the pier deteriorated in value, by the appropriation of the pier to railway purposes, and the erection of unsightly buildings on the foreshore. The promoters contended that the questions thus raised were all of a public nature, upon which the petitioners were represented by the corporation, who also petitioned, and that as owners the petitioners were not entitled to be heard, especially as there was a similar petition from owners, &c., whose land was to be taken compulsorily for the purposes of the bill:

Held, however, that the interests of the petitioners as inhabitants were sufficiently distinct from those of the corporation in this case to entitle them to a separate hearing, and that their right to a *locus standi* was not affected by the fact of other persons petitioning as landowners.

The *locus standi* of the petitioners was objected to, because (1) they do not allege that they are, nor are they, interested as owners, leasees, or occupiers in any lands liable to be taken under the bill, and they do not allege any special damage as likely to accrue to themselves in their individual capacity; (2) they do not represent the interests of the burgh of Helensburgh, nor do they constitute a majority of the inhabitants, whose interests in any case are re-

presented by the magistrates and commissioners of police of the burgh, who have themselves petitioned against the bill; (3) they are not entitled to be heard with respect to the roads and streets of Helensburgh, which are under the control of the said magistrates and commissioners; (4) they are more especially not entitled to be heard, as several owners, &c., of land liable to be taken under the bill in the parish of Row have petitioned, and their *locus standi* is not disputed.

Littler, Q.C. (for petitioners (1)): The bill authorises the construction of a new piece of line, and the abandonment of a line and station already in use in Helensburgh, and it also confirms an agreement made between the town council and magistrates of Helensburgh and the promoters, by which the corporation are to sell and the promoters to purchase the pier and harbour of Helensburgh. We allege that the piece of line and the station, which it is proposed to abandon, were constructed by the exertions and capital of the inhabitants of Helensburgh, which has thereby been greatly benefited, and we strongly object to the proposed abandonment and the substitution of another line. This new line is to be carried through the town to the pier, and a station is to be formed there, which will be so exposed to storms as to be unsafe. We object also to being deprived of the pier, and to the erection of unsightly buildings on the shore, which will greatly depreciate the value of property in the town and injure trade. The petition is signed by 300 persons describing themselves as "proprietors and lessees of lands and houses, traders, shopkeepers, and other inhabitants." This number represent an important body of inhabitants, and it is not necessary that there should be a majority petitioning.

The CHAIRMAN: Are the corporation of Helensburgh joint promoters?

Clerk, Q.C. (for promoters): They are petitioners against the bill. Not one of the petitioners says there is a single inch of his land touched.

Littler: That is not necessary. They petition as inhabitants. (*Liverpool Tramways Bill*, 1 Clifford & Stephens 142.) Nor does the fact of there being also a petition of owners, &c., in Row deprive us of our right to be heard. The corporation oppose nominally, but not the part of the bill to which we object, only the interference with streets. Their interests are quite different to ours, as they have an object in getting the bill passed in order to sell the pier and harbour, while we oppose the bill *in toto*. We are travellers on the line proposed to be abandoned, and users of the pier which is to be

converted into a railway pier. In the *King's Lynn Gas Bill* (2 Clifford & Stephens 5), where consumers were not heard, the petition of the corporation may be assumed to have been identical. The following cases are in point:—*Liverpool Tramways Bill* (1 Clifford & Stephens 142), *South Eastern, &c., Companies Bill* (Ib. 149), *Aberdare Gas Bill* (Ib., vol. ii., 28), *Cobham Railway Bill* (Ib. 57), *Midland Railway Bill* (Ib. 108), *Alliance Gas Bill* (Ib. 177), *Isle of Wight, &c., Railway Bill* (Ib. 211), *Pontypool Gas Bill* (1 Clifford & Rickards 51), *Carmarthen Gas Bill* (Ib. 147).

Clerk (in reply): The position of the petitioners is different to that of consumers of gas, who may be affected by the price of gas, and many of the cases cited, *e.g.*, the *Liverpool* case, where the petitioners were frontagers, are not analogous to this. Here all the interests affected are public interests, and the corporation represent the petitioners on all public questions. Not one of them alleges that he has any special interest affected.

Littler: They say that the construction of a new railway in front of the foreshore would cut off the houses from access to the river and firth.

Clerk: That falls within the same category. They do not allege that they are frontagers to the shore. The interference with the shore and the removal of the station are matters in which they are represented by the corporation. The petition of owners, &c., in Row, whose land is taken, raises precisely the same questions.

Mr. RICKARDS: Supposing that there had been no petition of the corporation, could you put forward that petition of the landowners against admitting the right of inhabitants to be heard on questions relating to the general interests of the town? The petitions do not raise the same question as to *locus standi*.

Clerk: I will not contest the *locus standi* further.

Locus standi Allowed.

Agents for Petitioners, *Simson & Wakeford*.

Petition of (2) COMMISSIONERS OF POLICE, &c.,
OF PARTICK, HILLHEAD, AND MARYHILL.

Local Authorities—Protection of Public Interests
—Injury to Hospital—Land not taken—Injurious affecting, doubt as to Compensation for
—Lands Clauses Act (England and Scotland)
—Railways Clauses Acts—Alleged discrepancy

in English and Scotch Law as to Compensation
—Adjournment to ascertain—Absence of Legal Remedy—Not a question affecting *locus standi*.

The petitioners were the local authorities for three neighbouring burghs, and as such trustees of a hospital jointly erected for the use of the inhabitants. They alleged that the hospital would be injuriously affected for the purposes for which it was erected by the construction of the proposed railway, and they claimed to represent the interests of the ratepayers, at whose expense it had been built, and who, under the bill, would be deprived of much of the benefit of it. No land belonging to the hospital was actually taken, but the railway skirted the boundary, and the petitioners alleged that great injury would arise to the inmates from the noise and vibration caused by the passing of trains. Cases were cited on behalf of the petitioners to show that they would have no remedy at law for injury arising from the use of the railway if authorised. It was answered that this gave them no additional right to be heard:

Held, without deciding the question of the petitioners' right to legal compensation, that, this being a case where the petitioners' land was not sought to be taken, mere injurious affecting could not, according to precedent, be allowed as a ground of *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the property referred to in their petition is not within the limits of deviation shown upon the deposited plan of railway No. 1, and is not liable to be taken or interfered with under the compulsory powers of the bill, and they are not owners, &c., of any land within those limits; (2) they do not allege, nor is it the fact that the general interests of the inhabitants of the burghs, of which they claim to be the local authorities, are injuriously affected.

Littler, Q.C. (for petitioners (2)): The petitioners are the commissioners and local authorities for the three contiguous burghs of Partick, Hillhead and Maryhill, and some time ago we agreed together to provide a common hospital under the powers given us by the Public Health Acts for our three burghs, and accordingly we pur-

chased land, and proceeded to erect the buildings, of which we have just completed a large portion at a cost of £15,000. The line of railway authorised by the bill passes through land immediately adjoining our lands and buildings, skirting our lands for more than 200 yards at a distance of 10 to 20 yards only from our boundary. The line also crosses the road which forms our only access from the north, and the levels of the road, as shown in the deposited plans, will have to be raised 9 feet, which will seriously injure our access. The noise arising from working the railway will seriously interfere with the treatment of patients in the hospital, and increase the death-rate. There is no clause as to injurious affecting in the Lands Clauses (Scotland) Act corresponding to the 68th clause in the English Act, under which we could get compensation.

The CHAIRMAN: If this were a case in England you could not be heard.

Littler: I think it is clear we should. We are here as representatives of a district, and we say that to destroy our hospital would injuriously affect our whole district. We are not simply here as owners.

Mr. RICKARDS: The serious injury that you allege is injury to the hospital?

Littler: To all the inhabitants of the district which we represent through the hospital, of the use of which they will be deprived, and in the construction of which their money will have been wasted. The burghs have been rated to provide that which is going to be rendered useless. I refer you to the *South Eastern Railway Bill* (1 Clifford & Rickards 259).

Mr. RICKARDS: We stretched the point there very much. Does not the law of Scotland give a remedy analogous to that which the Lands Clauses Act gives in England?

Clerk, Q.C. (for promoters): I have been engaged in many Scotch cases, and will undertake to say in no single case has the owner of land or property obtained a special clause in the bill on account of there being some deficiency in the law of Scotland, which made it different from the law of England on that point.

The CHAIRMAN: It may be convenient to adjourn to ascertain how that is.

[Case adjourned till Monday, March 12th.]

Littler (On case being continued after adjournment): There is no similar section in the Scotch Lands Clauses Act to the 68th of the English Act, but the 6th section of the Railways Clauses (Scotland) Act is the same as in the Railway Clauses (England) Act, and provides for the compensation of owners and occupiers for damage done by the construction of a railway.

The CHAIRMAN: Then as regards this particular case, it being the case of a railway, it would

appear to stand in the same position as if it were a case arising in England?

Littler: But our case will not entitle us to compensation at law, for the reason that the injury to us will arise not from the construction of the railway, but the use of it under statutory powers after it is constructed. (*Metropolitan Board of Works v. Macarthy*, Law Rep. 7 H.L. 243; *Hammersmith, &c., Railway Co. v. Brand*, Law Rep. 4 H.L. 171; *Duke of Buccleugh v. Metropolitan Board of Works*, L.R. 5 H.L. 418.) These cases I submit show that we should have no remedy at law, but if there is any doubt on the matter we ought to be allowed to go before a Committee and ask them to protect us. (*Metropolitan and St. John's Wood Railway, on petition of Mdlle. Tietjens, &c.*, 2 Clifford and Stephens 189.)

Clerk, Q.C. (in reply): Even assuming that these local authorities, who are the owners of this hospital, could not before a jury obtain any compensation, that would not entitle them to a *locus standi*. If you once admit people who allege that a railway will be a disadvantage to them, although their land is not taken, the number of such cases would be enormous. A person might allege that the whole comfort of his residence would be destroyed, or that some member of his family was in delicate health, and would suffer from the noise of the trains. Because certain public authorities have selected a certain site, and built a hospital, they cannot be heard to prevent the construction of a railway in contiguity with that site, any more than an individual who has turned his house into a private lunatic asylum, or appropriated it to any other purpose. The *Loughborough Park Chapel Case* (1 Clifford and Stephens 45) is in point.

The CHAIRMAN: The *locus standi* must be *Disallowed*. We are not called upon to decide whether the case is within the principle of the decision in *Metropolitan Board of Works v. Macarthy*, or not. That does not appear to affect the question of the *locus standi*, but I do not think we could allow the *locus standi* without upsetting previous decisions come to by the Court upon this subject.

Agents for Petitioners, *Grahames & Wardlaw*

Agents for Bill, *Sherwood & Co.*

NORTH METROPOLITAN TRAMWAYS (NEW WORKS, &c.) BILL.

Petition of GREAT EASTERN RAILWAY COMPANY.

14th May, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Tramways—Railway Company—Frontagers—Distinguished from Landowners—S.O. 135—Interference with Roads and Bridges—Competition, between Steam Tramways and Railways—Question Raised, but Expressly Reserved by Court—Steam Clauses, Withdrawal of—General Arrangement for—Claim for Hearing against Bill as deposited, Refused.

This was a bill for the extension of the promoters' tramway, and the construction of new works in connection therewith. The bill, as originally deposited, contained a clause (40) authorising the use of steam as a motive power upon the proposed tramways. The petitioners claimed a general *locus standi* (1) on the ground of competition; (2) as frontagers; (3) on account of interference with their bridges and the roads which gave access to their premises. A general arrangement had been come to on public grounds, with regard to the use of steam upon tramways, that the clauses authorising such user should be struck out of all tramways bills during the present Session. This arrangement being "a public act which they were bound to recognise," the Court refused to give the petitioners a *locus standi* to appear against clause 40, but left open the question whether railway companies are entitled to appear on the ground of competition against bills authorising the use of steam upon tramways. The promoters conceded the petitioners' right to a limited *locus standi* as frontagers, and on the ground of interference with their bridges and roads:

Held, that as frontagers the petitioners were only entitled under S.O. 135 to be heard against so much of the bill as related to the laying of tramways on the road upon which they were frontagers; also that interference with bridges and roads was only a ground for a limited *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they are not entitled to be heard according to practice on the ground of competition; (2) the petition discloses no ground for a hearing except against so much of the bill as relates to (a) the laying down of tramways along the streets (if any) in which the petitioners are frontagers, and (b) interference with the bridge and the road mentioned in the petition.

Littler, Q.C. (for petitioners): As to our right to be heard as frontagers, the Court never limit petitioners to a portion of their petition, and we claim a general *locus standi*. We are also entitled to be heard on the ground of competition against clause 40, which provides for the use of steam upon the proposed tramways. Although it is intended to strike that clause out, we must deal with the bill as deposited.

The CHAIRMAN: If you get a *locus standi* against the steam clause, it would be of no value to you, as an arrangement has been made with the authorities who have to deal with the matter to strike out the steam clauses in all tramway bills this Session. That arrangement is a public act which we must recognise.

Littler: But the promoters may come hereafter and ask for steam clauses, and we want to be heard to impose a condition on them never to use steam on this tramway.

Clerk, Q.C. (for promoters): The decisions of the Referees in numerous cases have been that railway companies are not entitled to be heard against tramways on the ground of competition, but that when railway companies complain of specific interference with the access to their stations, they can appear as frontagers under S.O. 135, but are only entitled to a limited locus. (*Dublin Tramways Bill*, 2 Clifford & Stephens 142; *London Street Tramways*, 2 Clifford & Stephens 85; *North Metropolitan Tramways*, *Ib.* 89; *London Street Tramways (Kensington and Westminster and City Lines) Bill*, *Ib.* 188; *Paddington, St. John's Wood, and Holborn Street Tramways Bill*, *Ib.* 193.)

Mr. RICKARDS: There can be no doubt, looking at the words of the S. O., that a frontager is only entitled to be heard on his allegations as to interference with his premises. A frontager is not a landowner entitled to a general *locus standi*. Then there is the other question about interference with their bridges.

Clerk: We admit their right to be heard as to interference with bridges, but that, again, only gives them a limited *locus standi*. (*North London Tramways Bill*, 2 Clifford & Stephens 82.)

Littler: If we are not to be admitted against clause 40, we ask that you will put on record that you do not decide the question, whether or not railways can be heard against steam

tramways, in order that your decision, if unfavourable to us, may not be used as an argument in future cases to prevent railway companies from being heard against the introduction of steam upon tramways.

The CHAIRMAN: We distinctly repudiate any idea of giving a decision as to the power of a railway to appear against a tramway company proposing to use steam power, and upon the question of competition in that case arising between them. The *locus standi* of the Great Eastern railway company is *Allowed* under S. O. 135 against so much of section 4 as relates to the Kingsland Road and City route, upon which the petitioners are frontagers, and also against such of the provisions of the bill as may authorise interference with any bridges or works of the petitioners.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Shaw.*

PIER AND HARBOUR ORDERS CONFIRMATION (1) BARREMMAN (GARELOCH) ORDER BILL.

Petition of DONALD and ARCHIBALD CHALMERS.

7th May, 1877.—(Before Mr. PEMBERTON, M.P., in the Chair; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Pier—Competition with, by Erection of Neighbouring Pier—Abstraction of Traffic, Apprehended—Provisional Order, Pier Built under Authority of—Practice—Competition, Allegations in Petition, Respecting, whether sufficiently Specific.

In 1866 a pier was built at Clynder by two private individuals, under the authority of a P. O., for the accommodation of steam and other vessels landing passengers and goods there. The owners of this pier now petitioned, chiefly on the ground of competition, against so much of a bill as proposed to confirm a similar P. O., for the construction of a pier at about 600 yards distance. The answer was, that though public traffic might come to the proposed pier, it was primarily intended for the accommodation of such persons as might buy plots of land on a building estate belonging to the promoter, and now being developed:

Held, that the petitioners were entitled to a *locus standi* on the ground of competition.

Competition may be sufficiently inferred from the general wording of a petition, without any specific allegation that loss of traffic is apprehended. Thus in a case in which petitioners alleged that they had not rendered competition necessary or desirable, by high charges or by want of attention to public convenience; that their existing pier amply supplied the public wants; and also complained that the proposed pier would be within 500 or 600 yards of their own:

Held, that though they did not allege, "in so many words," that traffic would be abstracted from their pier, they raised the question of competition sufficiently specifically, and were accordingly entitled to appear on that ground.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken or interfered with; no property can be taken or interfered with compulsorily under a pier or harbour order; (2) the proposed pier is to be constructed, among other objects, for the accommodation of the promoter's estate of Barremman, extending for a mile and a-half along the Gareloch; and the promoter having the sanction of the Board of Trade in regard to the use of the tidal waters, no person whatever ought to be allowed to oppose the P. O.; (3) the petitioners, while alleging that the proposed pier will prove "an obstruction to navigation and will destroy the amenity of the neighbourhood," do not allege that it will obstruct the navigation to or from the Clynder pier, or destroy the amenity of the same, or of any property belonging to them. In point of fact the proposed pier will be situated considerably over 600 yards from the Clynder pier, and cannot prejudicially affect any navigation or any amenity, and, at any rate, the petitioners have no right or interest to appear for the protection of public rights of navigation or amenity; (4) the petitioners do not, as was necessary, substantively aver that there will exist a competition with the Clynder pier, and ought not to be heard on this ground on the averments they make. In point of fact there is nothing of the nature of competition involved. The proposed pier will abstract no traffic which the parties interested prefer to carry to the Clynder pier, although

certain traffic which the Clynder pier cannot accommodate will, it is expected, go to the proposed pier; (5) the allowance of a full *locus* on competition involves the possibility of the rejection in such case of a scheme of a proposed pier, but such a rejection would in this case be a most inequitable restriction of the right of a landowner possessed of so large a sea-frontage. When the Clynder Order was passed the promoter of it was not entitled to assume that he was laying an embargo on all harbour works for the public or private accommodation of a considerable line of coast.

Anderson (for petitioners): The bill seeks to confirm, among other P. O., one authorising the construction of a pier at Barremman on the Gareloch, an estuary running out of the Clyde. In 1866 the petitioners, who are persons in a comparatively humble position of life, built a pier called the Clynder pier at a cost of £1,500, under the authority of a P. O., and obtain their livelihood from this pier. It was constructed for public accommodation and traffic, has proved a great convenience, but will suffer much abstraction of traffic if the proposed pier is placed at a distance of five or six hundred yards. No such pier is necessary and a petition has been presented, signed by a considerable number of the inhabitants of Clynder, against its construction. The title of the P. O. is misleading, because the proposed new pier is not to be built at Barremman but at Cross Owen, which is only about 500 yards distant from the Clynder pier, and fully 600 yards from Barremman itself. If the proposed pier were intended merely for the convenience of the owner of Barremman, it should have been erected fully one mile distant from the Clynder pier, and in that case we should have offered no opposition to it. In its proposed site, however, it cannot fail to prove an obstruction to navigation and will destroy the amenity of the neighbourhood, which in summer is largely frequented by visitors from Glasgow and elsewhere. We also say in our petition that we have not "rendered competition necessary or desirable by any interference with the public convenience or by endeavouring to levy high and immoderate charges."

Davidson (for promoters): We say that the petitioners do not allege competition sufficiently specifically.

Anderson: The very fact of the petition being Presented by the owners of the other pier would of itself imply that the case was a case of competition, and very little addition in the way of statement would be necessary.

Davidson (in reply): It is not sufficient to say that competition will arise by what is proposed; it is necessary to show that abstraction of traffic

must necessarily follow. There can be no abstraction of traffic here. The proposed pier is 646 yards from the existing pier. Mr. Thom purchased this property some years ago at a cost of between £30,000 and £40,000. He has the sanction of the Board of Trade to his erecting a pier, solely for the purpose of developing and accommodating his own property.

Anderson: He did not require a P. O. for the purpose of erecting a pier on his own property. He proposes to levy rates on the public.

Davidson: No doubt he expects traffic will come there that has never come there before. He is proposing to erect a new pier in order that a district now uninhabited may become inhabited, and in order that his property may be developed. The petitioners do not allege that we shall take anything away from their pier. If a pier was proposed to be erected on the Thames 600 yards from an existing pier, it could not be said that the proposed pier would abstract traffic from the existing one. The steamers would call at the existing pier just the same after the proposed pier was constructed, and the old pier would get just as much traffic. In the *Helensburgh* case (1 Clifford & Richards 49), it was alleged that through traffic would be diverted.

Mr. RICKARDS: Have any houses been built near to the site of the proposed pier?

Anderson: Between the two there have.

Davidson: There are preliminary agreements for the fencing of the land on the condition of a pier being built.

The CHAIRMAN: You would not dispute that, if another pier was proposed to be built within a distance of 50 yards instead of 600, it would be competition?

Davidson: No; I would not deny that that would be competition.

The CHAIRMAN: It is a question of degree?

Davidson: Yes.

Mr. RICKARDS: Supposing a number of houses or villas to be built near the site of the proposed pier, if the new pier was not constructed the old pier would get the benefit of the traffic to and from those houses or villas.

Davidson: Yes; but those houses would not be built if the proposed pier were not built. The old pier has been in existence ten years, and nobody has built houses yet in the neighbourhood of the proposed pier.

Anderson: There are houses being built near the proposed pier now.

Davidson: No; it is merely that a plan for building has been laid out. But the petitioners do not sufficiently specifically allege competition.

Mr. RICKARDS: They say that "your petition-

ers' pier at Clynder amply supplies the requirements of all residents or visitors to Clynder, or its neighbourhood." Then they say that no new pier is needed; that the proposed pier is only 500 yards distant from the other; and, lastly, that "it cannot be shown that your petitioners have rendered competition necessary or desirable." The whole thing breathes competition throughout.

Davidson : But the petition does not say that there will be any probability of any traffic leaving their pier and coming to our pier.

The CHAIRMAN : They do not say in so many words that anything will be abstracted; but they raise the question of competition sufficiently specifically.

Anderson : The two piers are not close enough together to entitle the petitioners to be heard on the ground of competition. In the case of the *Piers and Harbour Confirmation (Redcar Pier) Bill* (2 Clifford & Stephens 195), the Coatham Pier company, whose pier was 800 yards away from the proposed pier, was not allowed to be heard.

Anderson : That case was totally different from this. That was a case of two piers in two distinct towns.

The CHAIRMAN : We must *Allow* the *locus standi* of the Petitioners.

Agent for Bill, *Graham*.

Agents for Petitioners, *Connell & Hope*.

PROVISIONAL ORDERS (IRELAND) CONFIRMATION (HOLYWOOD, &c.) SO FAR AS RELATES TO GREYSTONES.

Petition of the CORPORATION OF DUBLIN.

2nd July 1877.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Provisional Order—Rural Sanitary Authority—Rival Water Supply—Within Authorised Limits—Municipal Corporation—Competitive Scheme in portion of their District—Former Legislation—Right of Opposition taken away.

A P. O. for facilitating the construction of waterworks by a rural sanitary authority was opposed by the neighbouring Municipal Corporation on the ground that the order amounted to an invasion of their waterworks district, which had existed for sixteen years under various local Acts. It ap-

peared, however, that in 1874 the petitioners, as the price of certain concessions obtained in an act of that year, had submitted to a clause giving—not by name, but generally—to certain of the localities included within their limits, of which this was one, the right of applying to Parliament for an independent supply, without hindrance by the corporation :

Held, that the *locus standi* of the petitioners (which would otherwise have been undoubted) was taken away by the special understanding of the Act of 1874.

This was a P. O. by which the Poor Law Guardians of the Rathdown Union, as the sanitary authority of the district, including the town and neighbourhood of Greystones, in the county of Wicklow, sought power to take certain land for the purposes of intended waterworks. The Corporation of Dublin petitioned on the ground that in 1861 they had been authorised to construct extensive waterworks; that they had incurred vast expense in doing so; that Greystones formed part of their extra-municipal district; and that under the Public Health Act, sanitary authorities could not take steps for supplying their district with water, whilst there was an existing water company competent to do so. It appeared, however, that in the year 1874, the corporation themselves obtained a further Act releasing them from certain obligations in portions of their district, and that Parliament, as the price of this concession, imposed upon them the condition that they were not to oppose any one of the districts in question which might seek powers of supplying itself with water.

The P. O. recited that the poor law guardians of the Rathdown union, being the rural sanitary authority of the district within which the town and neighbourhood of Greystones was included, had power under the Sanitary Act, 1866, and the Public Health (Ireland) Act, 1874, to supply water within their district, but were not authorised to acquire lands or premises otherwise than by agreement; that they had deposited at the office of the local government board plans showing the waterworks intended to be constructed by them, and the lands, water rights, &c., required for those works, and had taken all other necessary steps; and, in conformity with those recitals, the P. O. proposed to confer on the promoters the power of putting in force

the provisions of the Lands Clauses Acts with respect to all lands, &c., shown on the deposited plans, and required for the purposes of those works.

The petitioners, the Corporation of Dublin, had been authorised by an Act passed in 1861, to construct extensive waterworks at Roundwood, in the County of Wicklow, for the supply of the City of Dublin, and the intermediate district, including Greystones. By a subsequent Act passed in 1874, they were relieved, as to certain portions of their extra municipal district, from the necessity (imposed by sections 35 to 37 of the Waterworks Clauses Act, 1847, incorporated with their Act of 1861) of supplying water compulsorily, but in the case of every portion of the district so exempted, special conditions were attached by section 2 of the Act of 1874, as the price of the exemption. The undertakers claimed under the section of this Act of 1874, to be free to supply water within their own limits, without hindrance from the Corporation of Dublin. The latter viewed the P. O. as an invasion and withdrawal of portion of their district, and petitioned accordingly.

The *locus standi* of the petitioners was objected to, because (1) they were not "a water-works company," or undertakers established for supplying water within the meaning of the Public Health or other General Acts; (2) the promoters accordingly were under no statutory obligation to deal with the petitioners by purchase or otherwise before applying to Parliament; (3) it was not shown that the petitioners were "able and willing" within the meaning of the Public Health or other Acts to supply the district with water; (4) it would be inconvenient or impracticable for them to do so; (5) under the provisions of the Act of 1874, the district had been deprived of the right to a supply originally secured by the Act of 1861, and the petitioners accordingly had come under an obligation not "to oppose any person, company, or incorporated body, seeking Parliamentary powers to obtain a water supply" for any part of the district so excluded; (6) petitioners were legally disqualified under the Act of 1874 from supplying the district with water, inasmuch as their doing so would endanger the supply to Dublin and the remaining districts, where complaint was already made of insufficiency; (7) no sufficient right or interest was disclosed by the petition; (8) petitioners would not in fact be prejudiced or injured by the powers sought under the Order; (9) petitioners had no right to be heard against the design or cost of the proposed works; (10) the town of Delgany (referred to in the petition) already had a good supply of water; (11) no sufficient competition was shown, or would be

caused, to entitle the petitioners to a *locus* under S. O. 130; (12) no land, &c., of the petitioners was taken; (13) there was no allegation upon which petitioners could be heard according to practice.

Granville Somerset, Q.C. (for petitioners): This Order seeks, what has never been obtained before, the right of supplying water competitively within a portion of the district assigned to us by our Special Act.

Norwood (for promoters): We do not admit that there will be any competition.

Somerset: Then I will call a witness.

Parke Neville, C.E. (engineer to the corporation of Dublin), was accordingly examined. He stated that the corporation waterworks had been constructed at a cost of £600,000, and that Greystones, which was a seaside village in the Rathdown union, lay intermediately between Roundwood and Dublin, and was included within the limits of supply. There would be no difficulty in supplying Greystones and the surrounding area from the corporation mains. The works of the promoters would be in competition with theirs; and without this Order they would have no power to acquire lands, or to lay down pipes. Before the inspector of the local government board in Ireland, the promoters of this Order objected that the corporation were not a water company supplying the district under statutory powers, and so got rid of their opposition, and of the necessity of giving them notice. The profits of the water supply did not go to the corporation as such, but in relief of the payments of the ratepayers. The corporation were both "able and willing to supply water" to Greystones and its neighbourhood.

(Cross-examined): Questions had been raised as to the ability of the corporation to supply the outside districts with water. But there was no real difficulty in doing so; it was only a question of price. An action as to the supply of Bray had been commenced; but the corporation could, if necessary, supply twenty times the quantity they now supplied there.

Mr. RICKARDS: This may be important on merits: but how does it arise on *locus standi*?

Norwood: Our object is to show that it is neither convenient nor practicable for the corporation to supply Greystones. Besides, they have exhausted their borrowing powers, and must come to Parliament again before making further extensions.

The CHAIRMAN: These really are issues of fact; and should not have been raised as objections to *locus standi*.

Norwood (for petitioners), examined as a witness,

Henry Brett, C.E. (county surveyor and joint

engineer to the scheme of the promoters), stated that, under the Public Health Act, powers existed to construct water-works and supply water, and that the reservoir mentioned in the Order was only needed as a settling bed. No part of the Greystones' district was actually supplied by the corporation; and their powers of 1861 were regarded and treated as having been virtually repealed by the Act of 1874.

Norwood and Somerset, Q.C., having both been heard,

The CHAIRMAN (after deliberation) said: The Court have given the very best consideration they could to the interpretation of section 2 of the Act of 1874, and they hold that by the special words of that section, the *locus standi* of the petitioners is taken away.

Locus standi Disallowed.

Agent for Bill, *Sharkey.*

Agents for Petitioners, *Muggeridge & Badham.*

ROTHERHAM CORPORATION BILL.

Petition of CORPORATION of DONCASTER.

12th March, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Waterworks—Extension of Time Bill—Construction of Reservoir—Abstraction of Water—Neighbouring Municipalities, claiming same Watershed—Tributary Streams Impounded—Previous Legislation—Res judicata—Compulsory Powers already Exercised—No New Powers sought—Millowners—Navigable Stream—S. O. 14.

This was an extension of time bill for the construction of a reservoir and the necessary works in connection with the water supply of the town of Rotherham. In 1863, the promoters, who were the corporation of Rotherham, had obtained an Act for this purpose, and were under that Act empowered to use the waters of certain streams. These streams were tributaries of the river from which the petitioners, under an Act of 1873, drew the water supply for their town; but under that Act, they had been at the instance of the promoters specially precluded from impounding the waters of the same streams.

The powers of the original Act were now expiring, and the petitioners claimed the right of opposing their renewal. They also petitioned as owners of mills on the river below the point of abstraction of water, but it was shown that S. O. 14, which deals with the subject, did not apply, as the river on which the mills were situated was a navigable stream:

Held, that as the bill merely extended the time for the exercise of the powers of the original Act, and the question of rights in the streams proposed to be impounded had been already decided by Parliament, no new compulsory powers being now sought the petitioners could not be admitted to reopen the question; and that as millowners their rights were not sufficiently affected to, entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they have no power to impound or use the waters of the Jenkin Wood and Spencer Wood streams, which are tributaries of the Blacking Mill stream, which the promoters have Parliamentary powers to take and use by their Act of 1863, and which the petitioners were prohibited from taking by their Act of 1873; (2) whatever powers or rights the petitioners have or exercise are subject to the powers and rights already conferred by Parliament upon the promoters; (3) the petitioners by their bill of 1873 proposed to take the waters of these very streams, but were opposed by the promoters on the ground that Parliament had already authorised the promoters to appropriate these waters, and the question was discussed and decided by Parliament in favour of the promoters, and the petitioners have acquired no new rights in relation to them since that time; (4) the bill does not propose to confer any new or greater powers upon the promoters with reference to these streams, but only to extend the time for making the reservoir already authorised by which their waters are to be impounded. The lands required for such reservoir have been already purchased, and the filter beds and other works below the reservoir are in course of construction; (5) any rights which the petitioners may have to the waters of the said streams were taken away by the Act which authorised the promoters to construct the Dalton reservoir, and subsequently by the Act obtained by the petitioners in 1873; (6) they are not entitled to be heard according to practice.

Saunders (for petitioners): The bill will extend the time within which the promoters can construct a reservoir for the water supply of Rotherham, and by their original Act of 1863 they are already empowered to impound and use the waters of a certain stream, called the Blacking Mill stream, an important tributary of the Dalton brook, which flows into the river Don. The river Don flows through Doncaster, and forms our only means of water supply, and this Blacking Mill stream, which Rotherham seeks to impound and divert from us, belongs naturally and geographically to Doncaster. The powers of the promoters' original Act of 1863 were renewed in 1870 until the 1st of August, 1877, and, as the promoters have not yet constructed their reservoir, but for this bill they would not be able to deprive us of the waters of the Blacking Mill stream. Then, again, the Jenkin Wood and Spencer Wood streams are also tributaries of the river Don, and as such now form part of our water supply; and although we admit that we were precluded by our Act of 1873 from taking the waters of those streams, that does not deprive us of our right to be heard against an extension of time as now proposed by the bill for the exercise of powers, which, but for the bill, would expire this year. Supposing this bill were not carried, and the powers under the original Act expired, there would be nothing to prevent our taking the waters of those streams by agreement. *Non constat* what was good in 1863, is good now. The position of the parties after the lapse of so long a time may well be, and in this case is, altered. We also petition as millowners and owners of waterworks and other property abutting upon the river Don below the point at which it is fed by the streams, which under the bill the promoters will be enabled to abstract.

The CHAIRMAN: The right of the corporation of Rotherham to these waters was established by the decision of Parliament, and they were to have the water within a certain time. Is not this analogous to the ordinary case of a landowner who has received notice that his land will be required?

Saunders: No; it is the case of a landowner who has not received notice that his land will be required, and a landowner is entitled to be heard against an extension of time unless the relation of vendor and purchaser has been set up by his having received notice, in which case he is in the position of a creditor, and not entitled to a *locus standi*. We are not within S. O. 14, because we are on a navigable stream, but we are within the 20-miles limit, and if it had not been a navigable stream we should have been entitled to notice. The real question, however, for the Court is, whether there is a

possibility of injury occurring. (*Weardale and Sheldon Water Bill*, 1866, Smeth. 103, and 1 Clifford & Stephens, text, p. 24.) In the *Halifax Water and Gas Bill* (1 Clifford & Rickards 226) the Warley local board petitioning on similar grounds, were heard.

Mr. RICKARDS: Did the corporation of Doncaster appear against the original bill of 1863?

Saunders: Yes.

Shiress Will (for promoters): The bill is one merely for the purpose of extending time, and not one for the purpose of acquiring any additional powers, or for extending the time for the exercise of any compulsory powers as regards millowners and landowners. Undoubtedly the Doncaster corporation appeared against the bill of 1863, because that bill sought to take a watershed much wider than the area which Parliament ultimately gave us and which did in fact encroach upon the watershed of Doncaster. This water is only in the watershed of the Doncaster corporation in the sense of its joining the Don above Doncaster. It is not in the watershed of Doncaster in the proper sense, namely in the sense of draining towards Doncaster rather than towards Rotherham. As far as the Don is concerned, the proper persons to appear are not the petitioners, but those who are in charge of the navigation. It is a fallacy to say that the corporation of Doncaster are in the position of landowners whose land is liable to be taken. There are none of the compulsory powers of 1863 remaining unexhausted. We have taken the whole of the land that is necessary for our reservoir, pipes, and filter beds. Upon the corporation of Doncaster coming for a water bill in 1873, Parliament decided that this watershed did not belong to Doncaster, yet Doncaster is now seeking to re-open the whole question. With regard to the allegation in the petition that, on account of its increasing size, Doncaster may require to resort to these streams for its future water supply, that is no ground for a *locus standi*. (*Peterborough Water Bill*, 1 Clifford & Rickards 178.) With regard to the petitioners' claim to appear as millowners, they do not come within S. O. 14, and the policy of that S. O. is, in the case of a navigable stream, to constitute the navigation commissioners the proper parties to petition. As to the cases cited on behalf of the petitioners, in the *Weardale* case it was proposed to take water from the very source from which the petitioners were supplied. In the *Halifax* case a *locus standi* was evidently allowed, because there were certain matters in dispute between the corporation and the petitioners. In this case, as regards the rights of the petitioners both as millowners, and as a municipality supplying Doncaster with

water, this bill involves a matter which is *res judicata*.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for the Bill, *Sherwood & Co.*

Agents for Petitioners, *Marriott & Jordan.*

SOUTHAMPTON HARBOUR BILL.

Petition of the SOUTHAMPTON DOCK COMPANY.

16th April, 1877.—(Before Mr. BRISTOWE, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Competition—Pier and Harbour Board—Dock Company—Shipping Accommodation—Extension of Quays—Vessels attracted from Docks—Irrregular Expenditure Legalised—Further Borrowing Powers—Application of Monies—Whether within previous Legislation—Undertaking by Promoters to alter Bill—Ratepayers—in Borough—as distinguished from the Harbour—Representation.

Against a bill promoted by a pier and harbour board for raising additional capital for the purposes of works authorised by a former Act, and for legalising expenditure already made, a company, owning very large docks and warehouses in the port, sought to be heard on the grounds (1) that the promoters were neglecting their proper functions and competing with them in the accommodation of shipping; (2) that the expenditure sought to be legalised had been incurred in pursuance of this policy, and the further monies to be borrowed would be similarly applied; (3) that the powers sought of constructing works were in excess of the promoters' former powers; and (4) the petitioners relied on their large estates in the town as ratepayers, and on the fact that the harbour revenues were largely furnished by the shipping that resorted to the docks. The promoters replied, that, any works they might have constructed were authorised by Parliament, that the bill took no new

powers by which they would be enabled to enter into fresh competition with the petitioners, and that as to former payments out of revenue instead of capital, the petitioners had no voice in that, or any other financial provision of the bill, seeing that they paid no rates or dues to the harbour board, but were merely ratepayers of the town of Southampton:

Held, that the petitioners were not entitled to a *locus standi*. In the course of the arguments, the Court called attention to the language of one clause, under which it was doubtful whether the existing powers of the promoters as to works were not extended, and counsel for the promoters having given an undertaking that in Committee upon the bill it should be made clear that no extension of the powers of the Act of 1863 was sought, this was deemed by the Court satisfactory, and the works being "authorised works," they did not think it necessary to give a formal *locus standi* to see the alteration made.

The *locus standi* of the petitioners was objected to, because (1) they have no such interest as ratepayers or otherwise in the financial position and affairs of the promoters, or in the application of their funds, as entitles them to a hearing against the bill; (2) paragraphs 13 and 14 (as to payments of harbour rates by ships frequenting the docks of petitioners) disclose no ground of opposition; (3) the allegations in paragraph 15 (as to insufficient dredging), even if true (which the promoters deny), give no ground for opposition, as the promoters' duties and liabilities in respect of those matters are not altered by the bill; (4) there will be no new or increased competition entitling the petitioners to be heard; (5 and 6) the constitution of the Board is not proposed to be altered, and the petitioners cannot be heard in their capacity as ratepayers, being only one of a numerous class; or (7) upon any other ground according to practice.

Pembroke Stephens (for petitioners): We are far the largest ratepayers in Southampton. The docks themselves pay more than one-eleventh of the rates of the town, and the shipping which frequents the docks contributes to the revenues of the promoters the main portion of the tonnage and boomage rates levied by them. Our docks, in fact, by attracting so large an amount of shipping to Southampton have been mainly in-

strumental in furnishing and increasing the revenues of the promoters. By the Southampton Harbour Act, 1863, the several Acts relating to the promoters, whose existence dates from 1803, were repealed, and having been reconstituted they were empowered to maintain, repair, and alter their existing piers, quays, wharves and works, and to keep open and work the channels, and to remove obstructions in the port and harbour, to provide and maintain landing stages, pontoons, and other conveniences, and to maintain and improve the tramways on their quays and pier. Under their earlier Acts, the promoters had power themselves to provide docks, basins, and warehouses, &c., for the accommodation of shipping resorting to the port, but not having fulfilled this duty, in 1836 the petitioners came into existence, and under the powers conferred on them by Parliament, have since constructed a tidal basin, large graving and other docks and works, involving an expenditure originally of over £1,000,000, extending their operations as circumstances require. The Act of 1863 in effect recognised these services of the petitioners, for it took away many of the previous powers of the promoters. Since 1863, however, the promoters have done all they could indirectly to compete with the petitioners. They had no power left to construct docks, but by extending their quays and giving undue and special advantages to particular classes of shipping, they have deprived us of valuable items of revenue and have attracted ships which formerly came into our docks into their own special portions of the harbour. Not content with the mischief which they might perhaps legally do us under their Act of 1863, they have spent in the construction of work of a competitive nature large sums out of revenue, and the object of this bill is partly to legalise that irregular expenditure and partly to raise further sums by borrowing, for carrying on this unfair competition.

The CHAIRMAN: They propose to capitalise expenditure which has been already made?

Stephens: Practically, they want to legalise it. The question accordingly arises, whether the promoters, out of what are substantially public or trust monies, are entitled to carry on a competition with us, who are a Dock company. They injure us in two cases: they improve the other portions of the harbour, and do not adequately dredge or keep open the approaches to our docks.

Mr. RICKARDS: What is the nature of the competition between the Harbour board and the Dock company, of which you complain?

Stephens: Certain ships which were in the habit of lying in our docks have left them and gone elsewhere, the board having first con-

structed works in other parts of the harbour where ships could lie, and then tempted them to go there by very low rates. Against the continuance of this system we have no protection, as we are not represented on the harbour board.

The CHAIRMAN: If the works executed by this harbour board have been authorised by the Legislature, they are legal, and I fail to see how you can complain of them injuring you?

Stephens: They may be legal works and yet compete with us. But our case is, that as matters stand, they have not kept within the terms of their Act, and they are now proposing to borrow further sums of money.

Little, Q.C. (for promoters): We were distinctly authorised by our Act of 1863 to construct these works. As to the mode of paying for them a question may be raised, but not as to the works themselves. And we are not seeking any enlarged powers by the bill; the money borrowed hereafter will still be applied in manner authorised.

The CHAIRMAN: What interpretation do you put upon clause 6 of the bill, which authorises the board to borrow money "for the purpose of constructing such additional works and conveniences as they shall think proper, for the accommodation of the trade at the port, harbour, and pier, as authorised by the Act of 1863?"

Little: The words "as authorised by the Act of 1863," limit our powers. This is merely a bill to raise more money for the purposes of the Act of 1863, and not a second-class bill for the construction of any additional or different works.

Mr. RICKARDS: The words might be read thus, "the port, harbour, and pier, as authorised by the Act of 1863," in which case the previous words would give you fresh and very wide powers?

Little: That is not our intention, and we shall be prepared to make it quite clear when we go before the Committee. As to the financial part of the question, what we have done must be either legal or illegal. If it is illegal, the petitioners must have some remedy open to them. But if it is merely irregular, and the question is confined to whether the expenditure should have been out of capital or revenue, the petitioners cannot be heard to complain on that ground, because though they may be ratepayers in Southampton itself they are not payers of rates to the harbour board. It is the shipowners and not the petitioners who pay rates to us: and these do not join in the petition.

The CHAIRMAN: We need not, I think, trouble you further.

Stephens: Until the language is altered, the doubt as to the meaning of clause 6 still remains.

The CHAIRMAN: We understand, of course, from the promoters, and our decision is founded upon the understanding, that they are only seeking to execute works authorised by the Act of 1863, and that words will be added if necessary to make this clear.

Stephens: That will be quite satisfactory to us. In point of form, however, a *locus standi* is often granted to see that the alteration is made.

The CHAIRMAN: In this case it is unnecessary, as the works are the authorised works.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Simson & Wakeford.*

WHITEHAVEN, CLEATOR, AND EGREMONT RAILWAY BILL.

Petition of (1) CLEATOR AND WORKINGTON RAILWAY COMPANY.

23rd April, 1877.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Sir H. DRUMMOND-WOLFF, M.P.; and Sir HARCOURT JOHNSTONE, M.P.)

Railway Companies — Same land Scheduled, Limited Locus in respect of—Competition—Status of Petitioners not materially altered.

The petitioners and the promoters both scheduled the same land for the purposes of making fresh lines of railway, and a limited *locus* was conceded to the petitioners on this ground. They, however, claimed a general *locus*, on the ground that the line proposed to be constructed by the bill across the same land as they scheduled for the purposes of their own railway, would be in competition with them. It appeared that the lines proposed by the present bill were merely loop-lines for the improvement of the promoters' existing railway:

Held, that no such competition was shown as gave the petitioners a *locus standi* on that ground, but that they were entitled to a limited *locus standi* against so much of the bill as authorised the taking of the land already scheduled by the petitioners.

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs is interfered with; (2) although railway No. 1 in the bill is sought to be made in part on the same land as railway No. 1 in the petition, no such interference or competition with the petitioners' railway will be thereby created as to entitle them to be heard; (3 and 4) they are not entitled to be heard in support of any such provisions as are alleged, or any other alleged grounds of objection according to practice.

Michael (for petitioners): We are promoting in the present Session a bill proposing to take some of the same land as the promoters seek power to take, and we have both scheduled the same land.

Bidder, Q.C. (for promoters): It is true that we propose to take the same land, and according to practice, the petitioners are entitled to a limited but not to a general *locus standi*. They are not in the position of a landowner whose land is taken. They only propose to take the same land, as to which neither of us as yet have any rights or ownership. They do not say that the two lines are incompatible, nor are they in fact. The petitioners are not therefore entitled to be heard on competition and tolls.

Michael: As to our right to be heard on the general questions raised by us, we put it clearly in our petition that our line and that of the petitioners are really competing lines. I submit that we have a right, not merely to a technical *locus* as to the land which we both propose to take, but as to the construction of those lines proposed by the promoters, which are competing lines going over the same ground to accomplish the same purposes.

The CHAIRMAN: It seems to me the railways proposed by the promoters are merely loop lines for the better use of the existing lines. We confine the *locus standi* to the question of the taking of the same land, as to which notices have been given, that is to say to clause 4 of the bill, and so much of the preamble as relates thereto.

Agents for Petitioners, *Dyson & Co.*

Petition of (2) FURNESS RAILWAY COMPANY.

Practice — Alleged Joint Promotion of Bill — Petition for Bill duly Deposited—S. O. 62—Alleged Noncompliance with—Petitioners not now Promoting Bill in Parliament—Bill Petitioned for but not Deposited Jointly by Petitioners—Power of Withdrawing Bill—Test of "Proprietorship" of Bill.

The petitioners claimed a *locus standi* against the bill on the ground that they were joint promoters with the Cleator and Workington company of a bill which scheduled the same land as that scheduled by the promoters, and they claimed an equal right of opposition with the Cleator and Workington Company. The promoters denied that the petitioners were in fact joint promoters of the bill in question. It was admitted that the petitioners had deposited at the proper time a petition for the bill, but they had taken no part in the subsequent deposit of the bill itself or in its present promotion in Parliament, and they had not proved compliance with S. O. 62:

Held, that the mere fact of the petitioners having originally deposited a petition for the bill in relation to which they claimed a *locus standi* was not sufficient to constitute joint promotion by them; that it would not be competent to them to interfere with or oppose the withdrawal of the bill by its real promoters, or in case of its withdrawal to proceed with it without depositing a fresh petition and commencing *de novo*; and that therefore their *locus standi* as joint promoters must be disallowed.

(*Per Cur.*) The test of joint promotion of a bill is that neither party can withdraw such bill without the concurrence of the other.

The *locus standi* of the petitioners was objected to, because (1) no land or rights of theirs will be taken or prejudicially affected; (2) the powers objected to by them for constructing two small railways, commencing at and terminating with the existing railways of the promoters, are distant upwards of two miles from any part of the railways and undertaking of the petitioners, whose interests are in no wise affected thereby; (3) they cannot acquire an interest entitling them to be heard by alleging that they are joint promoters of the bill of another company, and seeking to purchase its undertaking. The promoters, however, deny that the petitioners are

such joint promoters, or if so, that their promotion is *bona fide*; no ground of objection is stated entitling the petitioners to be heard according to practice.

Clerk, Q.C. (for petitioners): We allege that we are joint promoters with the other petitioners—the Cleator and Workington Junction company—of a bill now pending in this House, under the name of the *Cleator and Workington Junction Railway Bill*, and we are, therefore, in the same position as they are.

Bidder, Q.C. (for promoters): We dispute the fact of their being joint promoters.

Clerk: The petition for the bill was signed and sealed by us, as well as by the Cleator and Workington, in December last. Supposing the Cleator and Workington did not proceed with the bill, it would be competent for us to proceed with it.

Bidder: S. O. 62 provides that a bill when brought in by an existing company must be put before the proprietors for their approval. Compliance with that S. O. was proved by the Cleator and Workington company but not by the Furness company.

Clerk: This bill was in due form submitted to our shareholders and approved by them. Till it has passed through a further stage it is not necessary to submit it to a Wharnccliffe meeting. The fact of our not now carrying the bill through Parliament does not signify.

Mr. BRISTOWE: You have not deposited the bill. Could not the other company withdraw the bill without your consent?

Clerk: They might do so, but if they did we as joint promoters might step in and proceed with the bill.

The CHAIRMAN: You could not do so without presenting a new petition. You would have to proceed *de novo* and bring in a new bill, or get leave to adopt the proceedings of the other party. I apprehend that in this case the Cleator and Workington company could withdraw the bill without any interference or objection on the part of the Furness company, which seems to be the test of the question. The Cleator and Workington company must be considered the sole proprietors of this bill. The *locus standi* of the Furness Railway Company is *Disallowed*.

Agents for Petitioners, *Toogood & Ball*.

Agent for Bill, *Lewin*.

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CLIFFORD AND RICKARDS'S *LOCUS STANDI* REPORTS.

VOL. II., PART II.

CASES

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BY THE

COURT OF REFEREES

ON

Private Bills in Parliament.

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P R E F A C E .

THE Reports now issued comprise CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Session 1878, and form Part II., Vol. II., of the new Series of *Locus Standi* Reports by CLIFFORD & RICKARDS, in continuation of the Reports of CLIFFORD & STEPHENS.

The Index of Subjects refers to Part II., now issued. An Index of Cases decided in the two Sessions, 1877-8, and comprising Parts I. and II., is also supplied.

Vols. I. and II., of "Clifford & Stephens," and Vol. I. of "Clifford & Rickards," with Parts I. and II. of Vol. II., contain a Record of the Decisions of the Court of Referees for the last twelve years, from the Session of 1867 to that of 1878 inclusive.

TEMPLE, March, 1879.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION, 1878.

* * Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1879.

BELFAST IMPROVEMENT BILL.

Petition of (1) ADAM JOHN MACRORY.

25th and 27th March, 1878.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)*

Improvement Bill—Corporation—Landowner—“Street,” definition of—Amendment of former Acts—Ancient Accommodation Road—Order for Paving of, not Enforceable—Made so by Bill—Retrospective Legislation—Street Improvements—Apportionment of Expenses—Owners affected by—Limited locus.

Against a bill promoted by the corporation of B. conferring additional powers as to street improvements, &c., and amending the provisions of former Acts, an owner of landed property within the borough petitioned on the ground that additional burdens and duties would be thrown upon him. Some years before, the corporation had made an order that an accommodation road traversing his lands should be paved, sewered, &c., at considerable expense, but had not been able to enforce this order, owing either to imperfections in the former Acts, or to practical difficulties in their working. The

bill, by the definitions which it introduced, would have the effect of curing these defects and of making the former Acts workable, and on this, as well as on the ground of his objections to the powers of the bill, he claimed a landowner's *locus standi*:

Held, that the petitioner was entitled to be heard against the clauses giving a new reading to the former Acts, and so changing their operation, and against certain additional powers as to streets, but not generally against the bill.

The petitioner was the owner of some sixty acres of land, originally agricultural, but now surrounded with buildings, his property having been taken into the borough when the boundaries were last extended; and his contention was that by different clauses of the bill, amending former Acts, the corporation would be enabled to call upon him to perform acts and to throw upon him burdens from which, as matters stood, he was exempt.

The *locus standi* of Mr. Macrory was objected to, because (1 and 2) the further powers sought by the bill were of general application throughout the borough, and did not specially affect him; (3) he was only a single ratepayer, and was not entitled to be heard, according to practice, against a bill promoted under the seal of the corporation.

Pembroke Stephens (for petitioner): By clause 4 of the bill the expression “the local Acts” is

* On March 27, Sir Harcourt Johnstone, M.P., sat as Chairman.

made to include all former Acts relating to the corporation and this Act; and by clause 6 the word "street" used in any of the local Acts is made to include "any * * * road, lane, * * * alley, passage, whether a thoroughfare or not, and any part or parts thereof." The petitioner's demesne lands are intersected by a narrow accommodation road, which has existed for over 100 years, affording access from the town to what were then pasture lands, but have since been covered with buildings. In July, 1875, the corporation made an order, purporting to be under the powers of the local Acts, directing this road to be paved, flagged, and sewered, at a cost of £1,041, assessing the petitioner, as an adjoining owner, to more than one-half of the amount. This order he resisted, being advised that they had no power to make it, and the corporation having also taken legal advice, had not since attempted to enforce the order. If, however, the bill passed in its present shape, the corporation might either enforce their old order or at once make a new one, and, in either event, he would be bound to obey. The injustice of declaring this road to be a street, and so rendering him liable to so serious a payment, was that he himself used it but little, and its chief purpose would be to give access to the lands and buildings of other persons lying beyond the petitioner's demesne.

Mr. RICKARDS: Do you contend that the meaning attached to the word "street," in this bill, will alter its effect when it occurs in the former Acts of Parliament?

Stephens: We do, distinctly. For instance, in one of the former Acts the word "street" is simply defined as "a street set out and paved for building." That is very different from a road or lane, "whether a thoroughfare or not." The definition in the bill is intended to run through and over-ride all the former Acts. We also object to the powers conferred on the corporation of ordering or carrying out street improvements, the cost of which is to be apportioned by the corporation between owners of property and their tenants. As owner of ground rents in different parts of the borough, Mr. Macrory will be affected by these several provisions. Clause 119 of the bill might also compel adjoining owners to pay for further street improvements, though the street had been already paved, levelled, and sewered. The objections to Mr. Macrory as a ratepayer do not touch his right to be heard as an owner, and the objections, in fact, admit that additional powers are being sought by the corporation at his expense and that of other persons. Owners similarly situated have been heard. (*Cardiff Improvement Bill*, 2 Clifford & Stephens 154.)

Pember, Q.C. (for promoters): The real reason why the corporation were unable to enforce their order against Mr. Macrory was, that it had been made under a wrong section of one of the former Acts. The power to tax Mr. Macrory, of which he now complains, has existed all along, and our powers accordingly were wide enough for the purpose. But, as a matter of domestic arrangement, we are obliged, under the former Act, to give certain notices, and go through certain formalities, and at some of these stages it is easy for the corporation to be tripped up. We are not, therefore, seeking any fresh powers over him or his property by the bill.

The CHAIRMAN: Why then do you alter the definition of "street?" Is not that to cure some defect or imperfection in the existing Acts?

Pember: Yes, to simplify the working of the Acts, but not to extend the powers which they confer.

Mr. RICKARDS: Is not the effect of the alteration this: to enlarge the subject on which the powers are to be exercised?

Pember: We say no. Under existing legislation we can order a road within the borough to be widened at the expense of the adjoining owner. This is a road within the borough, and accordingly the power exists, though there are practical difficulties in the way of carrying it out. The *status* of the petitioner is not altered by the new definition given to the word "street;" for the corporation could not order anything more to be done under the sections of the former Acts, so amplified by the bill, than they could have ordered to be done under those sections, or at any rate under other sections of the former Acts.

Stephens: The distinction is shortly this: Hitherto, I have successfully resisted the order of the corporation; if the bill passes, I shall no longer be able to do so.

Pember: You have only been protected by a difficulty of procedure, not by any actual right. In any event, Mr. Macrory can only be heard against any clauses which he can point out as affecting him injuriously, and not generally against the bill.

Stephens: If you admit his *locus standi* at all, as an owner, it should be general.

The CHAIRMAN: It is in our power to limit him.

Pember: He is not an owner whose land is taken, but only an owner upon whom a burden may be thrown in a particular way.

The CHAIRMAN: We Allow the Petitioner a *locus standi* against clauses 4 (interpretation), 6 (definition of street), and 119 (exercise by corporation of powers as to streets).

Agents for Petitioner, Sherwood & Co.

Petition of (2) OWNERS, LESSEES, &c., OF PROPERTY IN AND NEAR THE BOROUGH.

Improvement Bill—Owners and Occupiers—Representation—Practice—Mistake of Name in Objections—Correction of—Compulsory taking—Lands shown on Plans, but not mentioned in Book of Reference—Effect of—Restriction as to use of Lands unbuilt upon—Equivalent to Compulsory taking—Landowner's Locus—Omnibus Bill—Open Spaces—What Constitutes—Where Open by Day, but Enclosed by Night—Line of Frontage—4,000 years lease.

A bill as to street improvements promoted by the corporation of B. enacted by clause 87 that whenever an open space had been left between a building and a street, this should never afterwards be built upon so as to diminish the space unless the corporation consented; 25 persons claiming to be owners, &c., of property in the borough petitioned against the bill:

Held, that such of them as were owners of open spaces within the meaning of clause 87 were entitled to a general, and not merely to a limited, *locus standi*; but that ground in front of a shop which was enclosed with shutters at night, although it was open to the sky, and the shutters were removed in the daytime, was not "an open space" within the meaning of clause 87.

(*Per Cur.*) The deposited plans by themselves give no compulsory powers over lands. These are given by the express words of the bill itself, which usually make it a condition that the lands shall be those "shown on the deposited plans and described in the book of reference."

[Where a petitioner named "Ross" had so written his signature as to resemble "Scott," and was objected to in that name, the Court at the hearing allowed the objection to be amended.]

The *locus standi* of the petitioners was objected to, because (1) of the 24 persons signing it was not specified which were subjected by the bill to compulsory powers; (2) the following persons (23 in all) were not in fact owners, &c., of

property taken; (3) they were represented by the corporation; (4) petitioners could not claim to represent the population of Belfast, 200,000 in number; (5) they had no authority to petition according to practice; (6) the signature of James Cameron was not written by himself, or apparently by his authority.

Pembroke Stephens (for petitioners): The petition is really signed by 25 persons, of whom only 23 have been objected to by name, so that the *locus* of the other two is undisputed.

Pember, Q.C. (for promoters): We have a letter of withdrawal from one of them. As to the other, Mr. Ross, he wrote his name so like "Scott" that we objected to him in that name, and we ask the Court now to allow our objections to be amended to that extent.

The CHAIRMAN: Under the circumstances, Mr. Stephens cannot object to that.

Stephens: As to Mr. Cameron, the fact is that he is a gentleman over 80, and the signature was written by his son, with his authority. With regard to Mr. Ross, his land is actually within the limits of deviation.

Pember: It is very doubtful whether the limits of deviation touch his land at all, but at any rate, he has not received notice, his property is not numbered or scheduled, and cannot therefore be taken by us, for by clause 7 of the bill, it is only land "delineated on the deposited plans and described in the book of reference" that is to be taken.

Stephens: The ownership of the lands may be important hereafter as regards compensation, but the limits of deviation shown on the plans affect the lands themselves, regardless of the ownership.

Mr. RICKARDS: The plans by themselves give no powers over the land at all. They must be looked at in connection with the express words in the bill, and these make it a condition that the lands to be taken shall also be described in the book of reference.

Stephens: There can, I think, be no doubt as to the effect of clause 87, which practically confiscates a part of the lands of private owners. Clause 87 provides that "whenever an open space has been left between a building and a street, such space shall never afterwards be built on, so as to leave a less open space, without the approval of the corporation." Take the case of a building standing in its own grounds. This change, in effect, says to the owner, "We, the corporation, will take from you the whole of the ground between the building and the street"—(as to the meaning of which word see *ante*)—"and will re-grant the land to you, subject to a condition that you shall never build upon it." We also complain, that by the wide

powers taken elsewhere in the bill of stopping up streets, the property of several of the petitioners, though not actually taken, will be rendered less accessible, and, therefore, less valuable. As regards Dr. Ritchie, his name does appear in the book of reference.

The CHAIRMAN: Probably the promoters would not dispute that the *locus standi* of those whose land is actually taken, or who may be prevented from dealing as they please with their vacant land, should be allowed, and it will be for Mr. Stephens to name those who are in that position. As to the rest we do not think there is any case for the promoters to meet.

Pember: I do not object to any *bona fide* owner whose land is or may be taken.

Mr. RICKARDS: Not those only, but those also whose land may be affected by clause 87.

Pember: That is to say, against clause 87 itself.

Mr. RICKARDS: No; being landowners they will have a general *locus standi*.

Pember: This is not like the case of a railway proposing to take a man's land.

Mr. RICKARDS: It is like the case of an omnibus bill brought in by a railway company, against every part of which a landowner, once admitted, has a right to be heard.

The CHAIRMAN: We allow a *locus standi* to those who are owners of lands actually taken, or owners of lands which come within the operation of clause 87.

. The case was then adjourned in order that the names of owners, falling within the above definitions, might be ascertained.

On March 27th it was again called on.

Stephens: A difficulty has arisen with regard to Messrs. Rodd, who have property in different parts of Belfast, and the tenure of which differs apparently from anything in this country.

Pember, Q.C., objected to the right of Messrs. Rodd now to be heard, without the production of the necessary documents.

Mr. RICKARDS: We cannot try title, but we require to know, with some degree of precision, the nature of a person's interest who claims a *locus standi*.

[Mr. John Rodd was examined, and stated that he and his brother paid £1,000 yearly in rates in Belfast, and among other properties they had two which would fall within the provisions of clause 87. In respect of these they paid to the Marquess of Donegal two separate rents of £90 a-year and £16 a-year. The first they held on an 81 years' lease, the other for a term of 4,000 years, and they could not be dispossessed by any action on the part of Lord Donegal, who had merely a life interest in the property inferior in

value to their own. Upon one of these properties they had expended £6,000, and they would be able to build up to the line of the street but for the power taken by the corporation in clause 87. In cross-examination, the witness admitted that the corporation had already power to fix a uniform line of frontage which would govern one of the sites, and as regards the other, that although an open space by day, it was enclosed with shutters at night. His interest in the property was much more valuable than Lord Donegal's, but in the event of non-payment of rent, he presumed his lordship would have the usual remedies.]

Pember contended that as to one of the properties, Messrs. Rodd were tied down by the line of frontages, and therefore clause 87 would do them no harm; as to the other site the evidence had not carried the tenure to the point of ownership.

Mr. RICKARDS: As to the property which is closed in at night, we think it cannot be considered an open space.

The CHAIRMAN: The *locus standi* of Messrs. Rodd is *Disallowed*, and likewise of the other petitioners, except Dr. Ritchie and Mr. Ross (whose lands were affected by clause 87).

Agents for petitioners, *Munns & Longden*.

Agents for Bill, *Dyson & Co.*

BLACKPOOL PIER BILL.

Petition of the CORPORATION OF BLACKPOOL.

9th May, 1878.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Pier—Board of Trade, Extension Powers granted by—Alleged to be *Ultra Vires*—Bill to Authorise Powers granted by Board of Trade—Lease of Land for Pier, granted by Municipal Corporation—Low Water-mark, Buildings Erected on Pier beyond—Municipal Boundary, Pier, partly in and partly Outside—Licensing Powers of Corporation—Police Jurisdiction on Pier—Rateable Value of Pier—Injury to Property in Borough—Past Legislation, Complaint of.

In 1863, the Blackpool commissioners granted, to a newly-incorporated company, a lease for 999 years of town land lying between high and low water-mark for the purposes of a pier. In the same year Parliament

confirmed a scheme for the construction of this pier, and the company were empowered to levy admission and other tolls, and to contract with persons for the use of the pier, provided that no undue preference was given. In 1875-6 the Board of Trade authorised the company to extend the pier seawards some 300 feet, and upon this extended portion, which was outside the municipal boundary and jurisdiction, the company constructed a pavilion, refreshment-room, shops, and other buildings. They now promoted a bill giving statutory authority for the pier-extension and buildings, as it was alleged that the Board of Trade had no valid power to authorise this construction. The bill was opposed by the corporation of Blackpool, as successors to the local commissioners (the town having meanwhile received a charter of incorporation), on the ground that the town would suffer injury from the existence on the pier of music, and perhaps dancing-saloons, unlicensed by the corporation, and also from the transfer of trade from shops within the borough to shops erected on the extended pier and subject to no local burdens. The petitioners also alleged that, as the Bill would authorise the keeping of separate accounts of the two portions of the pier, the company might reduce or abolish the toll on the original portion, which was alone subject to rates, recouping themselves by the admission fees on the extended portion, and thereby seriously diminishing the rateable value of the pier within the municipal area :

Held, that the petitioners had shown no such injury to the borough as would give them a *locus standi*, but that they were entitled to be heard against clause 42, which gave the corporation a police jurisdiction over the whole pier. This, however, was an arranged clause, and as the petitioners thought it would minimize the inconvenience and injury sustained by the borough, they declined to avail themselves of this concession, and their *locus standi* was disallowed.

The *locus standi* of the corporation was objected to, because (1) no property or interests of theirs will be affected by the bill; (2) they are not interested in the matters proposed to be dealt with; (3) they complain in fact of past legislation; (4) they do not show how they will be prejudicially affected, nor are they so affected; (5) the bill does not contain any provisions affecting their rights, property, or interests; (6) they allege no objection or other grounds entitling them to be heard according to practice.

Clerk, Q.C. (for petitioners): The Blackpool pier company, under a Pier Order of 1863, were authorised to construct, and did construct, a certain pier, running into the sea for a distance of 1,550 feet. Blackpool was not then incorporated, but was under the management of a local board, who granted to the company a lease of 999 years of part of their land and foreshore for the construction of the pier. Subsequently, in 1875-6, the Board of Trade authorised the company to extend their pier seawards a further distance of 102 yards. The extension was made accordingly, and upon the part of the pier so extended the company have built a pavilion, or assembly-room, a refreshment-room, and shops. There was some doubt whether the Board of Trade had the power of authorising this addition to the pier, and the company now apply to Parliament, among other things, to give legal effect to what they have done. By the Order of 1863, the company were authorised to levy tolls on passengers and promenaders using the pier, on passengers' luggage, and on vessels using the pier; and they were also authorised to contract with persons for the use of the pier, provided that no undue preference were thereby given to any person. But the company now charge exceptional rates for admission to the pavilion, besides the toll for admission to the pier, and the bill (clause 34) constitutes the pavilion, the promenade round the same, the refreshment-rooms, and other conveniences on the pier-head a separate part of the pier, and for admission thereto the company are empowered to make what charges they think fit. The petitioners object to this special scale of charges as being contrary to the provisions of the Order of 1863, forbidding undue preferences in dealing with persons admitted to the pier. Again, the greater portion of the pier, as originally authorised, including the toll-houses, is within the borough of Blackpool, and rated accordingly; but the added portion is beyond low water-mark, and beyond the realm, and therefore not liable to be rated. By clause 37 the company propose to keep separate accounts of the earnings of the two portions of the pier. The petitioners allege that the company might thus, if they thought fit,

charge a nominal toll for the use of the pier, excepting the pavilion and adjacent buildings, recouping themselves by the higher rates of admission to the non-rateable portions, and thereby almost escaping liability to the local rates in respect of their whole property. The petitioners object to a bill which would legalize this state of things, declaring that it would cause great injury to the borough, lessening the value of property there, and incidentally damaging the promenade close to the pier. If this pier had been proposed as a whole when the sanction of Parliament was first asked to it in 1863, the corporation, or their predecessors in title, would have been entitled to be heard against the whole scheme, because our land between high and low water-mark was taken by the company, so that no pavilion or refreshment-rooms could have been erected on any part of the pier without our consent.

The CHAIRMAN: Are there in the lease any restrictions as to the use the company were to make of the land?

Clerk: It was for a pier.

Granville Somerset, Q.C. (for promoters): And this portion of the pier has nothing to do with the lease and nothing to do with the company's property.

Clerk: If there were any restrictions in the lease we should not be here. The company are seeking to do something to which our assent would have been necessary if they were now proposing the scheme as a whole.

Mr. RICKARDS: It is suggested that this added portion of the pier is not within the realm? Under whose jurisdiction is it?

Clerk: I suppose after the decision in the *Franconia* case it would be within the realm for certain purposes, though outside the jurisdiction of the borough. But the promoters get rid of the difficulty as to dealing with offences committed on the extended part of the pier by providing, by clause 42, that any offences on any part of the pier may be dealt with by the borough justices.

Somerset: That was an arranged clause.

Clerk: Had the corporation known that the company were going to construct all these buildings at the end of the pier, thereby avoiding local rates, we should not have granted the lease. The effect of clause 37, providing for separate accounts, would be that, by imposing nominal tolls, or no tolls at all, in respect of the rateable portion of the pier, and recouping themselves by means of the admission fees on the non-rateable portions, the company would be free from any contribution to the borough rates.

The CHAIRMAN: Does not the rateable value depend on the amount of toll that might be

taken rather than what is actually taken? If so, the reduction or abolition of tolls upon the rateable portion of the pier will not affect the rateable value.

Clerk: You could only ascertain the rateable value by ascertaining the amount of the tolls; there is no other guide. The company may charge a halfpenny for admission to the pier and a shilling for admission to the pavilion or music-room; and then they would say, "Our real profits are derived from the music or refreshment-room, and those are beyond your jurisdiction." Thus the rateable value of the pier, by such an arrangement of tolls as I have suggested, might be reduced 70 per cent.

Mr. RICKARDS: If the old pier affords access to the pavilion, shops, and other attractions, the value of that part of the pier would surely be increased.

The CHAIRMAN: Were you heard before the House of Lords?

Clerk: Yes.

Sir J. DUCKWORTH: Have the borough magistrates no jurisdiction as regards licensing on this extended part of the pier?

Clerk: No, it is entirely out of our jurisdiction. The company propose that we should deal with offences arising there in the music or dancing-saloons, or otherwise, but they will not contribute anything towards the maintenance of order. Before the Committee we should ask that the whole pier should be placed under our jurisdiction for licensing and other purposes; and that the company should also contribute towards the maintenance of the police. If Parliament had now to consider this as *res integra*, it cannot be doubted that they would place the whole pier under our jurisdiction, and would not allow any part of it to be exempt from rates.

Mr. RICKARDS: What you have to show is that the proposals in the bill would be injurious to the borough, not that it is expedient that the corporation should have jurisdiction over this extended part of the pier.

The CHAIRMAN: The construction of these buildings on the pier is surely to your advantage?

Clerk: No, to our serious loss, to the extent to which consumable articles, which would otherwise be sold in shops within the town, will be carried to the extremity of this pier and there sold and consumed without being subject to the rating burdens of other tradespeople in Blackpool. Then, too, there is no limitation to the height to which their buildings may be carried on the pier, and the company may construct there what is an eye-sore to the town.

Mr. RICKARDS: That would not give you a *locus standi*.

The CHAIRMAN: If, for the construction of these new buildings, the promoters had been compelled to buy land of other people, could you be heard to say they must not erect any buildings there?

Clerk: You must take the facts as they are. This is a construction out in the sea which can only be made profitable by means of the pier giving access to it and built on our property.

Mr. RICKARDS: At present the only ground you have laid for a *locus standi* appears to be a suggested diminution in the rateable value of the property within your jurisdiction.

Clerk: And also the injury caused to us by having a music-hall, shops, and possibly a dancing-saloon at the end of the pier.

Mr. RICKARDS: Are we to assume that that would be injurious to the borough?

Clerk: Yes; to have such places just beyond the point at which our jurisdiction stops might be a most objectionable thing to the inhabitants of Blackpool.

The CHAIRMAN: We think you would be entitled to object to the clause which puts the new pier under the jurisdiction of the police of Blackpool, but if you do not object to that clause, we do not think you have any *locus standi* at all.

Granville Somerset: We can strike it out if my learned friend wishes.

Clerk: No; we may as well minimise the nuisance as much as we can.

Granville Somerset: Then you do not give the corporation a *locus standi*?

The CHAIRMAN: No.

Locus standi Disallowed.

Agents for Bill, Durnford & Co.

Agents for Petitioners, Dyson & Co.

BRADFORD WATER AND IMPROVEMENT BILL.

Petitions of (1) HEATON LOCAL BOARD; (2) ECCLESHILL LOCAL BOARD; (3) NORTH BIERLEY LOCAL BOARD.

13th March, 1878.—(Before Mr. BRISTOWE, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Water Bill—New Capital and Works—Water-works owned by Municipal Corporation—Supply of Water in Bulk to Outside Districts—Rates Charged for, to Local Boards by Municipality—Past Legislation, complaint of—

Public Health Act, 1875—Arbitration under General Act (sec. 52)—Compulsory Supply to Private Consumers, Terms of (sec. 62)—Undue Preference by Municipality for Consumers within Borough.

The corporation of Bradford promoted a bill authorising them to raise additional capital for the construction of new waterworks. In 1854, the corporation acquired possession of the waterworks under statute, and in 1858 their limits of supply were extended to certain outside districts, parts of which afterwards became subject to the jurisdiction of various local boards. Under the Act of 1854, the corporation were required to supply water for domestic purposes, at specified rates, to consumers within the area of supply. But, in fact, the mains were not taken into the outside districts, and in 1862 and 1868 the corporation obtained statutory powers to supply water in bulk to local authorities beyond the municipal boundary, at rates and on conditions to be mutually agreed on. The petitioners had for some years been supplied under these powers, and had, at considerable expense, provided service reservoirs and works for distributing this supply to consumers within their respective jurisdictions. The corporation, however, had recently raised by 50 per cent. the price charged for the supply in bulk, and the petitioners now complained that this charge was unreasonable, that undue preference was given to consumers within the borough limits, that the corporation refused to submit the question of price to arbitration, and were evading their obligations under their original Act to supply water in the outside districts at the price therein mentioned, and that the grievances of consumers in the outside districts would be aggravated by the proposed increase of capital. The promoters replied that these complaints were really directed at past legislation, and that the bill, which was merely one for constructing new works to secure a more efficient service, and for increasing capital with that object, would in no way relieve the corporation of existing obliga-

tions, or change their relations towards the petitioners :

Held, that the petitioners had no *locus standi*.

The bill (*inter alia*) took power to construct and maintain additional works for the storage and supply of water, to enlarge the time for the completion of works already authorised, and to increase the capital by £140,000. By an Act passed in 1854 the waterworks were vested in the corporation, and under an Act passed in 1858, North Bierley, among other places, was included within the limits of supply. The petitioners alleged that at the time of this extension of limits, local boards had not been established in the outside districts, and there was thus no local authority interested in seeing that proper provisions were inserted for the protection of residents in those districts. The petitioners further alleged that the corporation had not extended their mains for the purpose of affording a supply within any of the townships included in their area of supply, but had always refused to extend their mains for such purposes, and were thus relieved from the obligation of supplying water in those districts at the maximum price authorised in section 34 of the Act of 1854. In order to avoid the operation of this section, the corporation, as the petitioners alleged, obtained power under the Bradford Waterworks Acts, 1862 and 1868, to supply water by agreement to local authorities and others in bulk or otherwise, "at such rate or price, and on such terms or conditions as should from time to time be mutually agreed upon." For some years this supply had been furnished at the rate of 6d. per 1,000 gallons, and relying upon the continuance of the supply at this reasonable rate, the petitioners had expended large sums of money in laying down mains and pipes and the construction of service reservoirs for purposes of distribution. About three years ago, however, the corporation gave notice that on the expiration of the existing contracts they should raise the price to 9d. per 1,000 gallons, and such increase of 50 per cent. was now being charged to many local authorities and others. The petitioners alleged that the corporation contended that they had a right to increase the price of all water they sold in bulk to any amount they thought proper, and the corporation further denied that the provisions as to arbitration contained in section 52 of the Public Health Act, 1875, applied to this case. The petitioners also alleged that it was their duty under the Public Health Act to see that every house within their district was properly supplied with

water, and (section 62) to require that such supply should be taken, provided that the water could be supplied at a cost not exceeding the water-rate authorised by any local Act in force within the district. In pursuance of this authority the petitioners had found it desirable that the owners of certain houses should be required to provide a proper supply; but having regard to the price charged to the petitioners by the corporation, such supply could not be furnished to these houses at the rate prescribed by section 34 of the Bradford Corporation Waterworks Act, 1854, which the Local Government Board had advised the petitioners was a local Act in force within the district, and consequently the petitioners were unable to enforce section 62 of the Public Health Act. The petitioners complained that the corporation gave undue preferences to consumers of water within the borough, supplying water for trading purposes at almost nominal rates and at times when the petitioners were unable to obtain a sufficient supply of water for domestic purposes. Again, within the borough large quantities of water were used for street-watering, sewer-flushing, and other public purposes, and no account of it was taken in calculating profits, while the water used for such purposes by the local authorities in the outside districts was charged at the full rates. From the published accounts of the corporation it appeared that the price charged within the borough for water supplied through meters for trade purposes averaged 3.33d., while the price charged during the same period to the local authorities for water supplied for all purposes for distribution outside the borough averaged 7.80d., and when the proposed increase of price took effect the rate outside the borough would be 9d. The petitioners objected to the proposed increase of capital, and submitted that it was unjust that the corporation should have a monopoly of the water supply within this district, without being liable to supply such water at a fair and reasonable price.

The objections taken to the *locus standi* of the whole of the petitioners were substantially the same, those relied upon by the promoters being as follow:—(3) The allegations of the petitioners amount only to a complaint against the corporation in respect of their exercise of powers already vested in them. Such complaint relates only to the rates charged by them for water supplied in bulk to districts outside the borough of Bradford. The corporation do not admit the truth of the allegations; but even if true the bill contains no provisions altering or interfering with the legislation on that subject now in force. (4) The bill, so far as it relates to waterworks, only seeks to em-

power the corporation to make additional works for the better utilisation and storage of waters to which the corporation are already entitled, and the petitioners have no interest therein.

R. S. Wright (for petitioners): It appears from the printed proceedings of the Committee who considered the Bradford Water Bill of 1875 that the Committee were under the impression that the arbitration clauses in the Sanitary Acts, which were in force before the Public Health Act, 1875, would apply in the Bradford case, and would, therefore, ensure a supply to the outside districts at a reasonable rate. We object to the proposed increase of capital, as it will tend to prevent the reduction of the present water charges, or, perhaps, increase them. The income from the waterworks undertaking is more than sufficient to pay the interest on all loans for waterworks purposes, and to make the required payments to the sinking fund for the redemption of the loans, leaving a large surplus of profit to the corporation, without taking into account the large quantity of water used for public purposes within the borough for which no charge is made. It is therefore inequitable on the part of the corporation to increase the charge to the out-districts by 50 per cent. If the preamble of the bill should be passed, clauses should at least be inserted fixing a maximum price to be charged to the outside districts, and providing that the terms and conditions of such supply should be settled in case of difference by arbitration.

Cripps, Q.C. (for promoters): Section 34 of the Act of 1854 provides that, upon the purchase of the waterworks by the corporation, they shall be bound to furnish "a sufficient supply of water" for domestic purposes to any person entitled to demand such supply. In the Act of 1862 a provision was inserted for the benefit of local boards in the extra-municipal district, enabling us to supply them by agreement with water in bulk, leaving them to distribute the supply themselves.

Wright: Section 18, in the Act of 1862, says, the corporation, if, and when they think fit, may agree with any local board "for a supply of water in bulk or otherwise."

Cripps: The relations of the Bradford Corporation and the local boards are in no way interfered with or changed by this bill. The expense of the new works now required will be charged upon the borough fund. When we took over these different districts we took also upon ourselves the obligation of supplying them according to the provisions of the Act of 1854; and section 18 of the Act of 1862, enabling the corporation to sell in bulk, does not do away with the former obligation.

The CHAIRMAN: We are of opinion that the Petitioners have no *locus standi*.

Locus standi Disallowed.

Agents for Bill, *Clabon & Co.*

Agents for all the Petitioners, *Layton & Jaques.*

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of JOHN URQUHART and ALEXANDER AIKMAN.

7th March, 1878.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir HARCOURT JOHNSTONE, M.P.; and Mr. RICKARDS.)

Railway Bill—Compulsory taking of Lands—Feuars, rights of—Easements—Covenant by Owner with Feuars, as to Buildings—Act for Compulsory Purchase, effect of, upon Covenants in Feuing Deed.

The owner of an estate in Hamilton, Lanarkshire, disposed of portions of that estate to certain feuars, for the erection of villa residences, covenanting that the then unfeuared portion should be appropriated only for a specified number of like residences, to be built according to a specified plan. A railway company now promoted an omnibus bill, under which they proposed to take from the owner, by compulsory purchase, portions of the unfeuared estate for the construction of a mineral railway. Two of the feuars petitioned on the ground that their covenants with the owner gave them rights in the nature of an easement, which would be interfered with under the bill. The promoters replied that the covenant in question was a personal covenant, conferring no right of *locus standi*, and that the interests of the feuars, if any, were sufficiently protected by the owner, who had also petitioned:

Held, that as, but for the bill, the petitioners would be entitled to prevent the appropriation of the unfeuared part of the estate for railway purposes, they were equally entitled to be heard against the bill.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no powers to take or use their land or property; (2) the easement or servitude in respect of which they claim, even if it existed, would not entitle them to be heard, as it arises only out of a personal covenant, and does not create any easement over the lands proposed to be taken under the bill; (3) the petitioner A. Aikman has no greater right or interest in the road leading to his residence than any other member of the public; (4) neither petitioner is entitled according to practice; (5) a petition has been presented by J. Watson, the owner of the estate, and of the lands forming part of it proposed to be taken by the bill, and the interests of the petitioners, and of any other feuars of the estate whose property is not proposed to be taken by the bill (if they have any such interests, which is denied) will be sufficiently represented by Mr. Watson.

Simson, Parliamentary Agent (for petitioners): Under our covenant we have a right to prevent the use of the unfenced portions of the estate for any purpose other than that of building villa residences like our own. [*Feuing plans and deeds produced.*]

The CHAIRMAN: You say that where the owner of an estate covenants with the feuar not to allow the other parts of the estate to be used for any other purpose than that of building villa residences, he is prevented from selling the land to a railway company?

Simson: Yes.

Mr. RICKARDS: By the laws of Scotland there would be a remedy against a disponent for any such breach of covenant?

Simson: Yes. By the bill a mineral railway would be constructed in a cutting through the property, and roads would be made upon the estate for the purpose of the railway. If the disponent had himself sought to lay down a mineral railway through the estate, it is clear that under the covenant the disponents would be entitled to prohibit it in a court of law; but if a Parliamentary power be given to the railway company, the Court may hold that the land is freed from the servitude created by the covenant. We therefore submit that we have a right to go to the Committee and ask for provisions which will protect us and preserve our right. (*Great Western Railway Bill*, 2 Clifford & Rickards 14; *Caledonian Railway (New Station) Bill*, Smeth. 108.) If the Caledonian company by agreement with the disponent and without Parliamentary powers purchased this property and proposed to make a railway, we should be entitled to prevent them from doing so. The company, therefore, are now coming for powers to do what they could not do without Parliamentary sanction.

The CHAIRMAN: You say that in respect of this property you are *quasi* landowners?

Simson: Yes. As to Mr. Aikman, there is the additional ground that the company propose to take part of a private road leading to his residence, and forming part of the land feued to him; and the company have served him with notice in respect of this road.

Venables, Q.C. (for promoters): As I am instructed, we do not touch that part of the road of which he may be the owner. As to the covenants, we can only look to the owner of the land. He may have entered into innumerable covenants with innumerable people, but we cannot serve them all with notice. The owner is the natural protector of those interests; and there is the additional objection that here there are only personal covenants, in which case the remedy of the persons aggrieved must be against the covenantor.

Mr. RICKARDS: That might be so if he were not discharged from the covenants by the Act.

Venables: Whether he would be discharged from them by the Act I am not prepared to say.

Mr. RICKARDS: If he were, the petitioners would be left without remedy.

Venables: It would create great confusion and inconvenience if those who apply for Parliamentary powers to take land, had to deal with all the persons who might have covenants with the original owner. When they made these covenants, the petitioners were bound to provide against future contingencies, including the one which has actually arisen—the compulsory taking of the land under an Act of Parliament. They have not so provided, and having chosen to be satisfied with what they have got, are not entitled to more.

The CHAIRMAN: We must *allow* the *locus standi*.

Agents for Petitioners, *Simson, Wakeford & Simson*.

Agents for Bill, *Grahames & Wardlaw*.

CALEDONIAN RAILWAY (GOUBROCK BRANCH AND QUAYS) BILL.

Petition of TRUSTEES OF PORT AND HARBOUR
OF GREENOCK.

7th March, 1878.—(Before Mr. PEMBERTON, M.P.,
in the Chair; Sir HARCOURT JOHNSTONE, M.P.;
and Mr. RICKARDS.)

*Harbour, Owned by Railway Company—Proposed
Improvement of—Pier—Competition of, with*

existing Pier and Harbour—Owned by Harbour Trust—New Railway to Harbour of Railway Company—Competition, Existing or New—Development of existing—Security of Debt Depreciated by New Competition—Traffic, Diversion of, from Harbour and Pier—Mortgagees of Rates, representation of, by Borrowers being Public Trust.

The Caledonian railway company, owning under statute a small harbour at Gourock, with power to charge rates and dues there, now sought to construct a line to Gourock and raise capital for the improvement of the harbour. Within two miles of the existing pier and new works thus proposed is the harbour of Greenock, and the harbour trustees of that port opposed the bill on the ground that a railway to Gourock and an improved harbour there would create a new competition with them, thereby reducing their revenue and depreciating the security afforded to mortgagees. The promoters objected that, as they were already owners of the harbour, the mere proposal to improve it and connect it with their railway system, gave the petitioners no *locus standi*, since Parliament, by sanctioning the transfer of the harbour to the promoters, must be held to have already sanctioned the apprehended competition. The company had, in 1866, obtained Parliamentary powers to make a line to Gourock, but three years afterwards had been authorised to abandon it:

Held, that as there was now no competition between the two harbours, but, by the proposed new works, the Gourock harbour would become substantially a new one, the petitioners were entitled to a *locus standi* on the ground of competition.

The bill was one for the construction of a line of railway, and of pier, quays, and harbour works at Gourock, immediately adjoining the municipal boundary of Greenock, but beyond the jurisdiction of the Greenock harbour trust, and about two miles from Greenock pier. The petitioners were incorporated in 1866, the property, management, and control of the port and harbour of Greenock being vested in them; and

they alleged that they had spent £940,000 (of which £780,000 was still owing by them), in forming or improving the harbour, and that new works were contemplated which would involve an expenditure of an additional sum of £400,000. In 1835 an Act was passed authorising the creation of a pier or harbour at Gourock. The proposed pier, however, was never constructed, though some alterations were made in an old pier then existing, and this was the only pier now existing. In 1866 the Caledonian railway company obtained Parliamentary powers to purchase the Gourock harbour undertaking thus authorised in 1835, and construct a line leading thereto. This line, however, was not constructed, and in 1869 the company obtained Parliamentary powers to abandon it. The bill in effect revived these powers, and proposed to raise capital for the improvement of the pier and harbour of Gourock. The petitioners opposed the bill on the ground that it would give rise to substantially a new competition with their harbour, thereby seriously prejudicing their interests.

The *locus standi* of the petitioners was objected to, because (1) the bill takes no land or property belonging to them; (2) they are not the owners of any line of railway which would be in competition with that proposed by the bill; (3) the harbour of Gourock is an existing harbour, and is the property of the Caledonian railway company, who are already entitled under Parliamentary authority to take rates and dues upon ships, goods, minerals and animals, as well as upon passengers for the use of the said harbour, and the petitioners allege no such competition as entitles them to be heard; (4) they are not the authority having jurisdiction in that portion of the estuary of the Clyde in which the proposed works would be situate; (5) the mortgagees of the rates and dues leviable by the petitioners have no right to be heard, nor can the petitioners be heard as representing them; (6 and 7) no facts or reasons are alleged conferring a *locus standi* on the petitioners.

Pope, Q.C. (for petitioners): At present the Caledonian company have neither harbour, nor quay, nor dock accommodation at Gourock, and all traffic between the Clyde and the Caledonian system at this point must pass over our Greenock pier and pay the dues we are entitled to levy. If this bill passes, the Caledonian company will be able to land passengers and goods on their pier at Gourock, and convey them to and from that point by their new railway, avoiding Greenock altogether. This is obviously a case of competition, and it is a stronger case than one arising between two private companies—we are a public body, charged with duties. We have a large debt.

the faith of our existing rights and revenue, and our mortgagees will be seriously prejudiced if this competition is sanctioned. It cannot be said that this is an improvement of existing competition. Such an argument might be urged if the line to Gourrock, authorised in 1866, had been constructed, but it was abandoned in 1869. Gourrock is now a little village at which the Clyde steamers merely touch to take up and set down passengers. If the bill passes, Gourrock will be turned into what it is not at present, a competing harbour with ours. The following cases are in point:—*North British Railway, Petition of Helensburgh Council* (1 Clifford & Rickards 49), *Burnham Tidal Harbour* (Ib. 205), *Bristol Port and Channel Dock Bill* (2 Clifford & Stephens 120), *Greenwich and Millwall Subway, Petition of Waterman's Co.* (2 Clifford & Rickards 23).

Venables, Q.C. (for promoters): Had our bill been confined to a railway to Gourrock, the petitioners would have had no possible *locus standi*, yet this would comprise by far the greater part of the competition which is apprehended. As to the harbour, it was constituted as long ago as 1835, when a company were authorised to levy harbour rates and dues. Under the Caledonian Act of 1866, the harbour and the rights then conferred on the undertakers were transferred to us, and this part of the Act of 1866 has never been repealed, for though in 1869 we abandoned the railway to Gourrock we did not abandon the power to buy the harbour. We bought from the Gourrock harbour company in 1869 their works, rights, privileges and authority. By virtue of this agreement and of the Act of 1866 all the powers granted by Parliament in 1835 became vested in us. Whether Gourrock is a large or a small harbour is immaterial. If it requires improvement no one has a right to come here and object to an application by us, its owners, for powers to raise capital for its improvement. In the *Burnham* case the proposal was to make a new harbour; here Gourrock is an existing harbour which the owners desire to improve. Very likely Gourrock harbour will compete with Greenock, but that gives the Greenock harbour trustees no *locus standi*. The fact that we are a railway company owning this harbour makes no difference. Parliament has already allowed us to own this harbour. The question of our statutory authority is, therefore, already decided, and the danger apprehended by the petitioners, of our diverting traffic from Greenock, was incurred by them when that Parliamentary sanction was given. Where a railway company is authorised to acquire a harbour, Parliament must be taken to assume that the company will, sooner or later, make a line to that harbour. If

the railway stood alone, and ran to a harbour not belonging to us, the petitioners would have no *locus standi*; why, then, should they have a *locus standi* because we happen to be owners of the harbour? Parliament has already decided that there are no reasons of public policy against a railway company owning and nursing a harbour of its own. But the case is stronger here, for all we seek to do is to exercise rights which already belong to us.

The CHAIRMAN: Are you not seeking to make, virtually, a new harbour?

Venables: We wish to make a bad harbour into a good one.

The CHAIRMAN: We must Allow the *locus standi* of the Petitioners.

Agents for Petitioners, *Simson, Wakeford & Simson*.

Agents for Bill, *Grahames & Wardlaw*.

CASTLEFORD AND WHITWOOD GAS BILL

Petition of (1) C. W. WHEELER AND OTHERS; (2) SURVEYORS OF HIGHWAYS AND OVERSEERS OF THE POOR OF ALLERTON-BYWATER AND OTHERS; (3) OVERSEERS OF THE POOR AND OWNERS AND RATEPAYERS OF FREYSTON.

9th May, 1878.—(Before Mr. PEMBERTON, M.P., is the Chair; Sir J. DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas Bill—Pipes under Highways—Right of Owner of Solum to Oppose Laying of—Absence of Minerals or Special Injury to Subsoil—Gas Works Clauses Acts, 1847 and 1871—Lands Clauses Act—Landowner's *locus standi*.

Practice—Signatures to Petition, insufficient—Representation of Townships by Overseers and Others against Gas Bill—By Highway Surveyors and Others—By Owners and Ratepayers—By Vicar and Churchwarden—Inhabitants and Occupiers, no Allegation that Petitioners are either—Representative character and number of Petitioners, insufficient.

Gas Bill—Alleged Monopoly Conferred on Company—Districts Injurious Affected by—S. O. (Right of Municipal or other Authority to Appear)—Powers of Supplying Gas or Water, no Injury to District—Prospect of Better Supply from other Sources, no ground of *Locus Standi*—Consumers or Traders, petitioning against

existing Gas, Water, or Railway Company. The Sutton Gas case reviewed (1 Clifford & Rickards 267.)

The General Acts enabling gas and water companies to lay down pipes under highways without notice or compensation to adjoining owners, cannot, even in the absence of minerals or of special injury, be construed as depriving such owners of the right to be heard against an interference with the subsoil of these highways. In a case, therefore, in which a gas company sought for powers over roads intersecting the estate of A :

Held, that the petitioner was not bound to allege or show any special injury, but, in accordance with previous decisions, was entitled to a landowner's *locus standi* against a bill which interfered with his proprietary rights.

A bill to incorporate a gas company and define its area of supply was opposed (1) by five petitioners, namely, the vicar, the surveyor of highways, an overseer of the poor, a churchwarden, and a coal company; and (2) by fourteen petitioners, including two overseers and an assistant-overseer. Both sets of petitioners set forth that they were owners and ratepayers, but neither alleged that they were inhabitants or occupiers within the proposed limits of supply. It appeared that the two townships in respect of which the petitions were presented were rural townships, sparsely populated :

Held, however, that neither petition sufficiently represented the district.

Against a bill to include certain rural townships within the limits of a new gas company, petitions were presented alleging that the bill would confer upon the company a monopoly injuriously affecting two of these townships, which would thus be deprived of the opportunity of obtaining better gas at lower prices from other sources. The petitions were dismissed on other grounds, but—

Seem, that the Court adheres to its decision in *Sutton Gas Bill* (1 Clifford & Rickards 267) which may be thus re-stated: that,

unless special injury to the district can be shown, no grievance affording rights of *locus standi* in Parliament is suffered by inhabitants whose district a gas company seeks power to supply, such district being outside every existing area of supply, and the inhabitants being subjected to no new liability by the bill, and being put under no obligation to use the gas when offered to them :

(*Per Cur.*) The offer of a company to supply gas or water to a district upon certain terms is no injury to anybody; and the allegation that petitioners hope hereafter to be better supplied by other people is not a ground of *locus standi*. But if a gas company, a water company, or a railway company, come to Parliament to alter adversely the terms upon which they have hitherto served consumers or traders, then the consumers and traders have a right to complain.

The bill was one to incorporate the Castleford and Whitwood gas company, the limits of whose supply would include certain townships, including Ledstone, Ledsham, Fryston, Allerton-Bywater, and other townships, in the County of York. The petitioner, C. W. Wheler, was owner of an estate of 3,000 acres, of which over 900 acres would fall within the limits of the bill; and he alleged, *inter alia*, that in order to carry out the proposed supply of gas it would be necessary for the company to lay down mains either in land belonging to him or along roads the solum of which belonged to him, and the land on both sides of which formed part of his estate. Mr. Wheler also alleged, in common with his co-petitioners, that arrangements were in progress for transferring to the local board of Castleford the undertaking of the promoters; that if such transfer took effect, attempts which had been made before would be renewed to include the townships of Ledstone and Ledsham within the district of the Castleford local board, and that he and the inhabitants of Ledsham and Ledstone (the principal of whom also signed petition (1)) would in other ways be injuriously affected by the bill.

The Allerton-Bywater petition (2) was signed by five persons—the surveyor of highways, the overseer of the poor, the vicar, a churchwarden, and a coal company, who worked the whole of the coal within the district—and was headed, “The humble petition of the surveyors of high-

ways of the township of Allerton-Bywater, in the county of York; the overseers of poor of the same township, and owners and ratepayers of the same township respectively;" but the petitioners did not allege that they were inhabitants. The Fryston petition (3) purported to be the petition of "overseers and owners and ratepayers in the township," and was signed by fourteen persons, of whom two described themselves as overseers, one as assistant-overseer, and the others as "owners and ratepayers;" but the petitioners did not allege that they were inhabitants or occupiers. Both sets of petitioners objected to the bill on the ground that it would establish a monopoly in the hands of the promoters, that thereby the price of gas would be enhanced, and its quality would be inferior to that with which the petitioners might otherwise be supplied; and they alleged that they would be injuriously affected if the bill passed, asking for the exclusion of their respective townships from the area of supply, or for the insertion of clauses empowering the local authorities to purchase the undertaking, within the two townships, within a period to be fixed by the bill.

The *locus standi* of C. Wheler and others was objected to, because (1) no land, &c., of theirs will be taken; (2) they will not be required to take any gas from the promoters; (3) they do not allege that they, themselves, supply gas within the limits of supply proposed to be authorised by the bill; (4) none of the petitioners are owners, &c., of any dwelling-house situate within 300 yards of the limits within which gasworks may be constructed under the bill; (5) they are not the municipal or other authority having the local management of any township or district alleged to be injuriously affected by the bill; (6) they are not at present consumers of gas, and C. Wheler, even if he were a consumer, would not, as an individual petitioner, be entitled to be heard; (7) the petitioner, C. Wheler, has no such interest in the roads dedicated to the public use within the proposed limits of supply as would entitle him to be heard in respect of interference with those roads for the purpose of laying mains and pipes; (8) the petitioners, N. Nickols and D. Midgley, describe themselves as surveyors of the highways for the township of Ledstone, and the petitioner, W. Oates, as surveyor of highways of Ledsham, but none of these parties petition in that capacity, nor do they allege that they have any authority to do so, or that the roads under their charge will be injuriously interfered with; (9) the petition is irrelevant as it states no grounds of objection to the provisions of the bill, but relates to an apprehension of the petitioners that in the event of two hypothetical occurrences quite beyond

the scope of the bill, namely, the sale of the promoters' gasworks to the Castleford local board, and the extension of the district of the local board over the said townships of Ledstone and Ledsham, the petitioners would be subjected to additional burthens; (10) the petitioners allege no such interest in the bill as entitles them to be heard against it.

The *locus standi* of the two other sets of petitioners was objected to on substantially the same grounds, and also because the petitioners did not represent consumers or inhabitants within the proposed area of supply, and had no special authority over or interest in the streets, roads, and highways in any district affected by the bill which would entitle them to object to interference with such roads, &c., or to object to the proposed limits of supply, or price, or quality, or pressure of the gas to be supplied.

Pember, Q.C. (for C. W. Wheler and others): A landowner like Mr. Wheler has a right to be heard against a bill which includes him and his tenants in its limits. The case might be different if there were a large population in the district crying out for gas, and if a *prima facie* reason were thus shown for bringing gas-pipes within the district. But here there is only one landowner: there is no pretence for saying there is any need for gas on his estate; and if even he stood alone why should he not be heard to say "I do not want your gas: this is an uncalled-for interference with me and my property."

Mr. RICKARDS: Interference with Mr. Wheler's proprietary rights is one question. The establishment of a gas company in a district, no liability being thereby imposed on any of the inhabitants, is another question. It is optional with the inhabitants to take the gas.

Pember: There is no pretence for asserting that upon Mr. Wheler's property there is a population which wants gas.

Mr. RICKARDS: The bringing of gas into the district is not an injury in itself.

Littler, Q.C. (for promoters): The case of the *Sutton Gas Bill* (1 Clifford & Rickards 267) is directly against the petitioners on this point. It was held in that case that a gas company coming into a district were only like people setting up a shop, and no grievance was thereby suffered by the inhabitants, inasmuch as they were not compelled to take the gas.

Pember: In that case only 40 inhabitants appeared out of 1000 or 2000, and the district was one in which gas was wanted; indeed, the petitioners contended that they could be better supplied elsewhere. That is not the case here.

The *CHAIRMAN*: One ground upon which you claim a *locus standi* is in respect of ownership of the solum of roads along which the pipes

will be laid. If you establish your claim upon that ground, it will be needless for you to go into the other point.

Pember: The promoters take roving powers to lay down mains in any part of the district within their limits of supply. These powers would enable them to enter upon any lands; but there are certain sections of the General Act which prevent them from going upon private land without consent. Thus, the only way of taking gas to Newton, Ledstone, or Ledsham, would be through roads which intersect my property, and the solum of which is vested in me. It has been decided that such interference gives the landowner a *locus standi*. (*St. Helen's case*, 1 Clifford & Stephens 64; *South London Gas Bill, Petition of South Eastern Railway Company*, 2 Clifford & Stephens 219; *Chelsea Water Bill*, 1 Clifford & Rickards 149; *Slaithwaite Gas Bill, Petition of Messrs. Mallinson, Ib.* 257.)

Saunders (for petitioners 2 & 3): The two petitions raise the same points. The surveyors of highways of Allerton-Bywater (the whole of which township is included within the limits of the bill) say that they have the sole and exclusive management, jurisdiction, and control of the highways in the township, and they object to the powers of breaking up these roads sought by the company. The petitioners further allege that Allerton-Bywater has no interests in common with the other townships to be supplied under the bill; they object to the monopoly which will thereby be created, and to the proposed standard of quality and price; and they ask that Allerton-Bywater should be taken from the limits of supply or that a clause should be inserted enabling the local authority in the township, within a fixed and limited period, to acquire the undertaking of the company within such township. The petition is signed by the vicar of the parish and one of the surveyors of highways.

Littler, Q.C.: One surveyor has no right to sign for the rest.

Saunders: If the case of the *Sutton Gas Bill* is to be considered a ruling decision, no inhabitants can be heard hereafter against a gas bill which does not propose an actual monopoly of supply within their district.

Mr. RICKARDS: Not unless they can show some special injury to the district to which they belong. The mere fact of the introduction of a gas company into a district, there being no obligation on the inhabitants to take the gas, is not a sufficient ground of *locus standi* for those inhabitants.

Saunders: If so, a virtual monopoly would be given to the company for all time to come behind the backs of the inhabitants, for it is not to be

supposed that another company would ever come into the district. Thus the inhabitants would have no voice whatever as to the price of gas, pressure, illuminating power, or other questions. I think the principle of that decision has not been that which has guided former decisions in this Court. (*Aberdare Gas Bill*, 2 Clifford & Stephens 23; *Alliance and Dublin Consumers Gas Bill, Ib.* 176.)

Mr. RICKARDS: There is a difference between the case of inhabitants seeking to be heard against a gas company coming into a district for the first time, and the case of inhabitants and consumers, who have been already supplied by an established company, seeking to be heard against a bill brought in by that company to alter the terms upon which they are supplying gas adversely to the interests of consumers.

Saunders: In none of the reported cases is any distinction drawn between inhabitants and consumers. I refer also to the *Pontypool Gas and Water Bill* (1 Clifford & Rickards 51).

Mr. RICKARDS: Where it is proposed to make a railway through a district, traders and freighters have no *locus standi* to say "we do not desire a railway through our district." But suppose after the railway has been constructed the company come to Parliament for an alteration of rates and tolls; the traders and freighters then have a *locus standi* to object to any alteration in the terms upon which the railway has been worked which affect them. For a company to offer to supply gas or water to a district upon certain terms is no injury to anybody. But if a gas company, a water company, or a railway company come to Parliament to alter adversely the terms upon which they have hitherto served consumers or traders, then the consumers and traders have a right to complain.

Saunders: Surely we are interested in fixing the terms upon which the company propose to supply us, even though we have not been actually supplied before; and have we not also a right to urge before the Committee that we hope to be supplied on better terms by other people?

Mr. RICKARDS: That is not a ground of *locus standi*.

Saunders: We say that we would rather remain as we are, and we allege that to vest in this company a monopoly of the supply of gas would be materially to enhance the price throughout the district. The larger portion of the district is already supplied by the Knottingley gas company, and we say that the effect of the bill would be to exclude that company from supplying us.

The CHAIRMAN: I see that in the *Pontypool* case the bill was for dissolving the old company and reincorporating it.

Saunders : Yes, and in that case only 175 persons petitioned out of a population of between 30,000 and 40,000, yet they were allowed to be heard, no distinction being drawn between inhabitants and consumers. We say we shall be injuriously affected ; i.e., by the establishment of this monopoly the price of our gas will be enhanced, and the illuminating power will be deficient ; and these allegations bring us within the S. O., under which, in your discretion, inhabitants may be allowed to appear where they allege injury to their district. (*Colney Hatch Gas Bill*, 1 Clifford & Rickards 213; *Epsom and Ewell Gas Bill*, 2 Clifford & Rickards 10.)

The CHAIRMAN : The petitioners in the latter case were people with whom the company were already dealing.

Saunders : If the principle underlying the *Sutton* case be carried to its logical conclusion, the result will be that any company may propose to include any district outside its present area of supply, and so obtain a monopoly there (for Parliament would never grant power to another company to come in and compete within the same district), and the people interested in the proper supply of that district will not be able to say a word in opposition to the project. The answer will be, "You are not consumers." Suppose a company has power to supply a district, but the gas is so bad, and the charge so high, that no one takes it ; if they come to Parliament to raise the price, can it be said that only consumers can be heard ? If so, the result will be that the worse the supply, the more likely are the company to pass their bill without opposition. As to the number of petitioners, I admit that in both cases the number is small, but the number of signatures must be tested by the number of inhabitants. Both are thinly populated agricultural districts in which there are no municipal authorities or local boards. The two overseers, the assistant overseer, and twelve ratepayers sign the *Fryston* petition ; and of the five signing the *Allerton-Bywater* petition one is surveyor of highways, another is overseer of the poor, another is the vicar, the fourth is churchwarden, and the fifth is the *Silkstone* and *Haigh Moor* coal company, who work the whole of the coal within the district.

Littler (in reply) : As to Mr. Wheler's claim in respect of ownership of the solum of the roads the cases cited do not apply, though, as this is a Court not subject to review, even supposing the current of authority to be against me, it would be competent for the Court, and would be only fair to the promoters, to reconsider its decisions, especially as the Court does not give reasons for them. There is no single case on record in which any landowner asserted that he

had a right to compensation for interference with the subsoil by the carrying of pipes along a road intersecting his property.

Mr. RICKARDS : Does it not rather increase the hardship if a landowner is liable to have his property interfered with, receiving no compensation ?

Littler : That is the argument I used, but ineffectually, in the *Hospital* case (*N. British Railway, No. 2, Bill*, 2 Clifford & Rickards 54), when I contended that the hospital was injuriously affected without compensation. (*Gas Works Clauses Act*, 1847, ss. 6 & 7 ; *Lands Clauses Act*, ss. 7 & 85 ; *Gas Works Clauses Act*, 1871, s. 10.) When undertakers lay gas mains along a public road, Parliament does not call on them to take the steps with regard to compensation which they are required to take when they enter on private lands ; and the sections just quoted show that Parliament never contemplated that any private individual might come before a Committee and say *mero dictu*—"I will not allow a gas company to come along these roads," no valid reason on public grounds being given, and no injurious affecting alleged. Mr. Wheler does not say that his estate would be one sixpence the worse if the gas mains were carried through it, and I should think his property would be considerably the better. In any event he is bound to show how it would injuriously affect him.

The CHAIRMAN : I do not think he is bound to give you any reason.

Mr. RICKARDS : I understand you to admit that if the laying of the pipes under the road interfered with minerals or cellars, the petitioner here would have a *locus standi*.

Littler : On principle, no ; though I admit that in cases where those circumstances have existed, the landowner has been allowed a *locus standi*. These circumstances do not exist here. So clear was the legislature that in such a case there should be no compensation, that no machinery is provided for awarding any, and nobody has ever suggested that notice must be given to an owner that the road adjoining his land may be interfered with by the laying down of pipes along it.

Mr. RICKARDS : Because you are not required to specify the course your mains are to take ; you are not required to deposit plans.

The CHAIRMAN : A landowner's rights may be interfered with by the carrying of gas or water pipes along a road, as for instance if there are minerals under the road.

Littler : No doubt where there is such an allegation there may be a distinction, but no such allegation is made here.

Mr. RICKARDS : But that is a matter which we have to consider in dealing with the principle of

the question. You are to a certain extent infringing the proprietary right of the landowner if you occupy the subsoil of the roadway, this subsoil being private land.

Little: The legislature has given to the public the right to go along the road, and no roadside proprietor can stop the public traffic. Why should not the legislature give the same power in the case of gas and water pipes?

The CHAIRMAN: Because the legislature has given a right of way along a road for the benefit of all the Queen's subjects, it does not follow that power should be given to a lot of speculators to run through a man's land.

Little: The legislature has deliberately allowed gas and water companies to lay their mains along a public road without paying any compensation; this is precisely the same power that is given with regard to sewers under the Public Health Act of 1875.

Mr. RICKARDS: While a landowner may be subject to this right of passing through his land for certain purposes without compensation, ought he not to have the right of objecting to such a use of his land, his only mode of preventing such an injury being by an appeal to Parliament?

Little: Parliament has found that, except under special circumstances, such a use of his land is no injury, for it allows him no compensation.

The CHAIRMAN: Though the landowner may not be entitled to compensation, the legislature does not say that he is not entitled to be heard against any interference with his land, just as the owner of a field would be entitled.

Little: Where a landowner's injury is such that Parliament has provided no remedy, he is not entitled to be heard. This was the very question decided in the *Hospital* case (2 Clifford & Rickards, 54).

The CHAIRMAN: We think Mr. Wheler is entitled to a *locus standi*, on the ground that he is a landowner. As to his co-petitioners, probably their *locus standi* will not be pressed?

Pember: The admission of Mr. Wheler will be sufficient.

Little: As to the Allerton-Bywater petition, it purports to be signed by the surveyor of highways, the overseers of the poor, and owners and ratepayers of the township; but there is no allegation in the petition that the petitioners are either owners or ratepayers, or that they are even inhabitants. A man may be an owner or a ratepayer and yet not live in the district at all, and if not an inhabitant he cannot be a consumer. I submit that, without going further, this objection is fatal to the petition. For all we know, the surveyor of highways, the coal com-

pany, and all the rest of the petitioners may live out of the district.

Mr. RICKARDS: The vicar, the overseer, and the churchwarden may be taken to have a representative character?

Little: But what jurisdiction have they to represent the parish for these or any purposes? The guardians of the union are the rural sanitary authority.

The CHAIRMAN: I think we must hold that the petitioners signing the Allerton-Bywater petition do not sufficiently represent the district.

Little: The case of the petitioners signing the Fryston petition is even worse. Their petition is headed like the other, "the petition of overseers and owners and ratepayers," and is signed by two overseers and the assistant-overseer (who may be a clerk). All the other petitioners describe themselves as owners and ratepayers; but not one says he is an inhabitant.

The CHAIRMAN: Nor do they say they are occupiers.

Little: They even carefully avoid saying so.

Saunders: It is a mere technical omission. The whole of the burthen of the petition is that the petitioners will have to take the gas.

The CHAIRMAN: Our decision upon this petition must be the same as upon the other: the two seem to be in pretty much the same position.

Little: The first petition will stand simply as the petition of Mr. Wheler?

The CHAIRMAN: Yes.

Locus standi of Chas. Wheler, *Allowed*. *Locus standi* of other persons signing the petition of Chas. Wheler and Others, *Disallowed*.

Locus standi of Overseers of Highways and Overseers of the Poor of Allerton-Bywater and Others, *Disallowed*.

Locus standi of Overseers of the Poor and Owners and Ratepayers of Fryston, *Disallowed*.

Agents for (1) C. W. Wheler and Others, *Walters, Young & Co.*

Agents for (2) Surveyors, &c., of Allerton-Bywater and Others, and (3) Overseers, &c., of Fryston, *Jacobs & Vincent*.

Agents for Bill, *Grahames & Wardlaw*.

CHELTENHAM CORPORATION WATER BILL.

Petition of CHARLTON KINGS LOCAL BOARD.

25th February, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Water Company—Corporation Seeking to Acquire Undertaking of—Construction of Works—Local Board—Urban Sanitary Authority—Road Trustees—Property of, Scheduled—General locus standi, Claimed by—Disallowed quā Land-owners—Public Health Act, 1875—Local Boards, Obligations Under, as to Water Supply—Abstraction of Source of Water Supply to Petitioners' District—Interception of Underground Spring—Rates—Water Supply, Compulsory Claim to—Amalgamation—Possible Future Requirements of Water by District not a Ground of locus standi—Waterworks Clauses Act.

A corporation promoted a bill empowering them to acquire the undertaking of an existing water company, and also to construct new works. For the purposes of the bill they scheduled in their Book of Reference a road in the district of which the petitioners were the local and urban sanitary authority, and as such the road trustees. The schedule included an iron weigh-bridge in one of the public roads. The petitioners claimed a general *locus standi* as land-owners on the ground that the weigh-bridge was their private property, and also that the road was vested in them as the urban sanitary authority by the Public Health Act:

Held, however, that they were not entitled on these grounds to a general *locus standi* in the character of landowners, and could only be heard against interference with the road and property of which they were trustees.

The petitioners, whose district was within the company's limits of supply, also claimed to be heard generally against the bill as the local authority bound, under the Public Health Act, to supply the district with water in the event of any failure in obtaining a proper supply by private enterprise. They complained that the provisions of the bill were insufficient

to give an adequate supply to their district whose wants were daily increasing, and that the promoters, by impounding the waters of a river which formed the natural source of supply to the petitioners' district, rendered useless any attempts they might make at a future time to supply a deficiency, while the bill left it optional to the promoters to provide or not for the wants of the inhabitants. The petitioners also objected to the rates fixed by the bill as excessive. With regard to the duties and obligations of the petitioners to provide a supply of water, in case of deficiency in the present service, it was shown that their powers under the Public Health Act in this respect would not be interfered with by the powers to be conferred upon the promoters:

Held, that the *locus standi* of the petitioners must be limited to such clauses as dealt with the question of rating (on which point they were entitled to represent the rate-payers) and a clause authorising the construction of new works within their district.

The *locus standi* of the petitioners was objected to, because (1 and 2) no property, rights, or interests of theirs will be taken or interfered with; (3 and 4) they allege that the supply of water furnished by the company, the purchase of whose undertaking is authorised by the bill, is wholly inadequate, and that the power and duty of providing an adequate supply is imposed upon the petitioners; but this duty has been wholly neglected by them, and the bill is promoted to remedy the evil arising from their neglect; (5) the petitioners have no rights, proprietary or otherwise, over the river Chelt, nor does the bill authorise the promoters to impound those waters for their own profit or advantage; (6 and 7) as to rates, those authorised by the bill are less than those authorised by the Act regulating the supply of water by the company to the consumers within the petitioners' district; and the petitioners are not themselves, nor do they represent, consumers of water, nor have they such interest in the question of water rates as to entitle them to be heard on that subject; (8) they have no interest in the acquisition of the company's undertaking by the promoters, nor (9) have they any interest which entitles them to be heard on their petition against the bill according to practice

Saunders (for petitioners): We are owners of property actually scheduled in the Book of Reference. The promoters schedule the whole of a public road, the ownership of which is vested in us by the Public Health Act, and they schedule an iron weigh-bridge in the road which is our private property. We, therefore, claim a general *locus standi*.

Pope, Q.C. (for promoters): The petitioners are not landowners in the sense which gives them a landowners' general *locus standi*. With regard to the weigh-bridge we have no intention of taking it.

Saunders: If the bill passes we have no security that it will not be taken away.

The CHAIRMAN: Is the road a public road?

Saunders: Yes.

The CHAIRMAN: The guardians of the road have not the subsoil of the road.

Saunders: Perhaps not, but we are the urban sanitary authority in whom, under the Public Health Act, the road is vested.

Pope: This question is *res judicata*. Trustees of a road are not entitled to be heard in the character of landowners. (Smeth. 3rd Ed., 31; and *Caledonian* case, *Ib.*, 2nd Ed., App. 107.) We concede them a *locus standi* in respect of any interference with the roads and other property they are interested in as public trustees.

The CHAIRMAN: We cannot allow the petitioners a general landowners' *locus standi*. It must be limited as Mr. Pope suggests.

Saunders: Then we claim a general *locus standi* as the local board and urban sanitary authority of the district, that district being within the existing company's limits of supply. The object of the bill is two-fold, namely, first, to enable the corporation to acquire the undertaking of the company; and, secondly, to authorise the construction of works, and the diversion and collection of waters and streams named in the latter part of clause 45. The bill empowers the promoters to take the waters of the River Chelt, just above the boundary of our district. That river flows through our district, and forms the natural source of our water supply, of which the bill will therefore deprive us, while, at the same time, it contains no effectual provisions for supplying our district, or compensating us for taking the waters of this river. It is incumbent upon us, under the provisions of the Public Health Act, if the existing water supply is deficient (as it will be here with our large and increasing population), ourselves to supply our district; but this will be no longer possible when the promoters have drained the Chelt.

Mr. RICKARDS: Have you any property in the waters of the River Chelt?

Saunders: Not exactly, but we may be said to have certain proprietary rights; as, if we arranged with a riparian owner to construct works on his land, we could use the river as the source of our supply. (*Wakefield Water Bill*, 1 Clifford & Rickards 122; and *Halifax Water Bill*, *Ib.* 226.) The promoters also propose to abstract the waters of an important spring in our district.

Pope: The spring is underground where it is proposed to intercept it, and that gives no legal or Parliamentary rights.

Mr. RICKARDS: That point has been decided in previous cases.

Saunders: Then we complain that the rates proposed by the bill are excessive, and that at any rate we ought to have clauses inserted rendering it compulsory on the promoters to supply our district.

Pope: Under the Waterworks Clauses Act, which is incorporated with the bill, any owner can, on certain conditions, compel us to supply with water.

Saunders: But there ought to be a clause compelling the promoters to supply our district generally. We also claim to be heard against the bill as an amalgamation bill. (*Birmingham Water Bill*, 1 Clifford & Rickards 143.)

Pope (in reply): We concede the petitioners a limited *locus standi* as to any interference with roads, pipes, &c., under their management, and also with regard to rates, but they are not entitled to discuss the propriety of the proposed purchase or the question of the new works. Our interference with the River Chelt confers upon them no right to be heard, when they have never attempted to utilise that river for the purposes of supplying their district, and do not now propose any scheme for doing so, but merely suggest it as a possible future contingency. The district of Charlton Kings is within the area of supply of the bill, and the petitioners will have the same right of supply from the Cheltenham corporation as they could have had if their own local authority had undertaken the supply. Moreover, their rights as a local authority under the Public Health Act, in case of any failure of supply, remain untouched, and they will have the same power of enforcing a supply of water for public purposes—such as cleansing, watering, &c.—as individual owners have for private purposes. There is a clear distinction between this and the cases cited by the promoters, especially in the allegations of the respective petitions.

The CHAIRMAN: You concede that the petitioners are the right persons to represent the ratepayers?

Pope: No doubt that is so.

The CHAIRMAN: We Allow the Petitioners a limited *locus standi* against clause 45 (construction of new works), so far as it affects works within the district of Charlton Kings Local Board, and against clauses 76 and 77 of the bill (as to rating).

Agents for Petitioners, *Toogood & Ball*.

Agents for Bill, *Wyatt & Co*.

CLEVELAND EXTENSION MINERAL RAILWAY BILL.

Petition of STEPHEN YOUNG RIDDELL.

11th March, 1878.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Practice—S. O. 131, 132 [In what cases Shareholders to be heard, &c.]—S. O. 62-66 [Bills Promoted by Companies to be Submitted to Meetings of Proprietors, &c.]—Non-Compliance with, by Dissident Shareholder—Absence from Country—Claim to Indulgence Disallowed.

A dissentient shareholder, who had been absent from the country at the time of the meeting of proprietors of the company, held in conformity with S. O. 62-66, claimed the indulgence of the Court to grant him a *locus standi* against an extension bill, on the ground that such absence from the country prevented his attendance at the meeting, of which he did not receive notice until after it was held, the notice having been misdirected. He also asked to be heard under S. O. 131, taken by itself:

Held, that S. O. 131 and 132 must be read as one order, and that the petitioner could not be allowed to dispense with the rules laid down by the S. O. in question.

The *locus standi* of the petitioner was objected to, because (1) no lands, &c., of his are taken or interfered with by the bill; (2) his interests as a shareholder in the promoters' company are not distinct from the general interests of the company; (3) he has not dissented at any public meeting of the company in conformity with S. O. 62-66 of the House of Commons; (4 and 5) the allegations in the petition relate chiefly to matters now pending in the Court of Chancery,

and he has no right to be heard upon this or any other ground alleged in his petition according to practice.

Rees, Parliamentary Agent (for petitioner): The promoters seek an extension of time for the purchase of lands and the completion of works. The petitioner, who is a shareholder, was abroad when the meeting of proprietors was convened in accordance with S. O. 62, and the notice of the meeting was not received by him until after the appointed day, having been improperly addressed, so that through no fault of his own he was unable to dissent at the meeting. I submit that the petitioner is entitled to be heard on an equitable construction of S. O. 132, or at any rate under S. O. 131, which applies where no meeting has been held.

Mr. BRISTOWE: S. O. 131 and 132 must be read together.

Littler, Q.C. (for promoters): The S. O. are very clearly worded. The petitioner is not entitled to be heard on account of his absence from the country.

The CHAIRMAN: The S. O. are so plain upon the point that we do not think the question is arguable. The *locus standi* of the Petitioner must be Disallowed.

Agent for Petitioner, *Rees*.

Agents for Bill, *Wyatt & Co*.

CLYDE NAVIGATION BILL.

Petition of (1) OWNERS AND OCCUPIERS OF PROPERTY IN GLASGOW.

27th February, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Navigation Trustees—Powers sought to Extinguish Fire at Expense of Owner—Rating—Owners, Occupiers and Ratepayers—Police Board—Public Rates at present Chargeable with Expenses of Extinguishing Fires—Trading and Mercantile interests—Representation of, claimed by Promoters.

A body of river trustees sought powers, *inter alia*, to charge the expense of extinguishing fires in their river, and the harbour connected with it, to the owners of vessels and goods who might require the services of their river fire-engines. The petitioners were owners and occupiers of property in

Glasgow, consisting in many cases of warehouses abutting on the river and quay, and they already contributed to the rates levied by the board of police of the district, who were authorised under their Act of incorporation to charge the expense of extinguishing fires to the general rates leviable by them. The petitioners complained that if the bill passed they would thus be subjected to a double charge in respect of fires, and that expenses now defrayed out of public rates would become chargeable to private owners individually. The promoters, among other objections, urged that the petitioners were precluded from being heard against the bill, on the ground that from the nature of their body the Clyde trustees represented the petitioners as shippers and traders :

Held, that the petitioners were entitled to a *locus standi* against the clause imposing this new obligation upon them, and were not precluded from a hearing by the doctrine of representation.

The *locus standi* of the petitioners was objected to, because (1 and 2) the promoters, who were incorporated under their Act of 1858, consist of a body of twenty-five members, fifteen of whom are by that Act declared to be the representatives of the shipping, mercantile and trading interests of Glasgow, and the petitioners are, as their petition shows, members of the shipping, mercantile and trading community of Glasgow, and their interests are, therefore, represented by these fifteen members of the promoting body; (3) the petitioners do not represent or allege that they represent interests distinct from those of other owners and occupiers conducting similar businesses in Glasgow, and they are adequately represented by the trustees as above-stated, nor do they allege any ground for a hearing according to practice; (4 and 5) the bill does not interfere with any property or rights, statutory or otherwise, belonging to the petitioners, or repeal or alter any provisions now in force for their benefit or protection; (6) the allegations in the petition are directed entirely against clause 12 of the bill, by which it is proposed to empower the trustees to charge owners for the use of their floating fire-engines in the Clyde and the harbours of Glasgow when employed in ex-

tinguishing fire on board vessels or among goods, but the petitioners have alleged no grounds for a hearing against this or any other clause or against the preamble of the bill.

Pember Q.C. (for petitioners) : We are owners and occupiers on the banks of the Clyde and the harbour of Glasgow, and are also shippers. In our capacity of ratepayers to the board of police of Glasgow we are liable under their Act of 1866 to pay rates, to be applied, *inter alia*, to the expenses of extinguishing fires within their district (in which we are comprised), subject to a small contribution on the part of the owner or occupier of the premises in which the fire occurs. This principle of throwing the public duty of extinguishing fires upon the local authority was recognised in the case of the *Drighlington Local Board v. Bower*, W. N., 1873, p. 220, and is at present enforced under the Glasgow Police Act, but will be set aside if the bill passes, as clause 12 empowers the promoters to charge the use of their floating engines on the Clyde and in the harbour of Glasgow, in case of fire on board vessels, or among goods, to the private expense of the owners of the vessels or goods. The bill will therefore relieve the police board of a public duty, to be carried out by means of the public rates, and throw the whole expense of its discharge upon private individuals. With regard to our being represented by the trustees who promote the bill, the term "shipping, mercantile and trading community" has no legal or corporate significance, and therefore that objection to our being heard cannot be upheld. (*Huddersfield Waterworks, &c., Bill*, 1 Clifford & Rickards 229.)

Clerk, Q.C. (for promoters) : The facts in the *Huddersfield* case make it clearly distinguishable from the present case. It was there proposed by the bill to throw the charge of extinguishing fires upon persons who were already taxed, and who would thus have a fresh burden thrown upon them.

Mr. RICKARDS : If a person lived in a house rated under the Police Acts, and was in charge of a warehouse where goods were burnt, he would pay twice over for a fire being extinguished.

Clerk : Only if he called the Clyde trustees' engines into action. The clause only extends to the salvage of the goods in the warehouse.

The *CHAIRMAN* : But it would become the duty of the trustees to extinguish a fire among goods in a warehouse abutting on the harbour, and then the owner would be forced to pay you ; whereas at present he says " it is the duty of the police board to extinguish fire in my warehouse, and they can indemnify themselves for the expense of doing so out of the public rates." We

grant the Petitioners a *locus standi* against clause 12 of the bill.

Pember: And so much of the preamble as relates thereto?

The CHAIRMAN: It is not a question touched upon in the preamble, and your opposition must be limited to clause 12.

Agents for Petitioners, *Grahames & Wardlaw*.

Petition of (2) OWNERS OF SHIPS, &c., REGISTERED AT THE PORT OF GLASGOW.

Navigation Trustees—Shipowners—Representation of, Insufficient as an Estoppel to Right of being heard—Petitioners as Ratepayers—Imposition of New, and Increase of Existing Rates—Extinction of Fire—New Charges as to—Board of Police—Appropriation of Quays and Wharfs—Levy of Rents and Charges by Promoters—Establishment of Ferry—Application of Existing Rates to New Purposes—Insufficiency of Allegations of Petition as to.

The shipowners of a port petitioned against a bill promoted by the navigation trustees of the river, upon which the port was situated, as involving fresh rates, in addition to those for which the petitioners were already liable. The promoters sought to exclude them from a hearing, on the ground that the petitioners elected some of the navigation trustees, and were therefore represented by them:

Held, that this objection could not be entertained, the property of the petitioners being subjected to new rates, and the *locus standi* of the petitioners was therefore allowed against all the clauses of the bill imposing new rates and charges, or varying existing ones.

The petitioners also claimed a hearing against the general borrowing powers of the bill:

Held, that they could only be heard as to this ground where rates were to be freshly levied, or their present maximum increased, and not against the money clauses generally.

The *locus standi* of the petitioners was objected to, because (1 and 2), of the twenty-five members who compose the body of promoters, fifteen are by their Act of Incorporation declared to represent the mercantile and trading community of Glasgow, and nine of these fifteen members are elected by the shipowners of Glasgow, so that the petitioners are doubly represented by the trustees, and they have no interests distinct from those of other shipowners and ratepayers similarly circumstanced; (3) the bill confers no powers to take or interfere with any property, rights, or privileges of the petitioners; (4) the petition alleges no ground for a hearing according to practice.

Little, Q.C. (for petitioners): With the exception of one shipowner, who is a member of the Clyde trust, we represent the entire steam trade of Glasgow. The general purposes of the bill are to construct ferry works and to establish a ferry, and for these purposes, and others already sanctioned by Parliament, the Clyde trust propose to borrow a large additional sum of money, viz., £830,000, and to alter existing and levy new rates. As shipowners at the port of Glasgow we already pay heavy rates to the promoters, and it is clear that fresh calls will be made upon us, in order to pay the interest on the large sum authorised to be borrowed. We therefore strongly object to this increased borrowing power. The trustees are also authorised by the bill to appropriate particular quays and wharfs, or portions of them, to the use of particular vessels as they think fit upon terms and conditions which they think fit. This is really imposing a new rate upon us for privileges to which we are at present entitled without any additional payments. The rates for the use of the graving docks are also proposed to be increased, and by clause 12 of the bill the promoters are authorised to charge shipowners for the expenses incurred by them in extinguishing fires on board ships by the use of their river fire-engines, which is another new tax upon us, that duty being at present performed by the board of police, and charged, with the exception of a slight contribution from the shipowner, to their general rates. With regard to our being represented by the promoters, we only elect a small minority out of their body, viz., nine members out of twenty-five. We claim to be heard against the imposition of all these additional rates and against the largely increased borrowing powers authorised, which must have shortly the effect of a corresponding increase in the rates to which we are subject. (*Margate Pier and Harbour Bill*, 2 Clifford & Stephens 200; *Plymouth, &c., Water Bill*, 1 Clifford & Rickards 254.)

Clerk, Q.C. (for promoters): With regard to the borrowing powers of the bill, the additional sum is for purposes already authorised under our former Acts; no new rate is imposed upon the petitioners, and therefore they are not entitled, according to previous decisions, to be heard against the money clauses. (*Belfast Water Bill*, 1 Clifford & Rickards 61; and *South Staffordshire Water Bill*, *ib.* 187.) With regard to the cases cited in aid of the petitioners the facts make them clearly distinguishable from the present case.

Mr. RICKARDS: Your bill contains some new rates?

Clerk: As regards the new graving dock rates, I concede them a *locus standi*.

The CHAIRMAN: The trustees by your bill undertake a new duty altogether, namely, the proprietorship of the ferry. Surely the petitioners, as ratepayers, are entitled to be heard in respect of that?

CLERK: Their petition makes no reference to or complaint against the establishment of these ferries, or objection to the application of existing rates to this purpose, and therefore they cannot be heard on their petition upon that question. As to clauses 20 and 21, which deal with the appropriation of certain quays, it is quite voluntary with the shipowners to appropriate these quays to their own use.

The CHAIRMAN: Those clauses give you the power of making a charge and fixing its amount for services for which there is no charge at the present time. We *Allow* the Petitioners a *locus standi* against clause 12 (as to charges for extinguishing fires), against clauses 13 and 14 (as to the increased rates for the use of the graving docks), and clauses 20 and 21 (as to appropriation of quays, &c.); and *Disallow* their *locus standi* against the other portions of the bill, including the money clauses.

Agents for Petitioners, *Grahames & Wardlaw*.

Agent for Bill, *Loch*.

DUBLIN, WICKLOW, AND WEXFORD RAILWAY BILL.

Petition of WATERFORD BRIDGE COMMISSIONERS.

3rd June, 1878.—(*Before Mr. PEMBERTON, M.P., in the Chair; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.*)

Bridge and Ferry—Statutory Limits of—Diversion of Traffic from—By Railway Bridges—

Ferry Rights, Invasion of—Competition in Bridge and Ferry Traffic—Railway Traffic and Ordinary Bridge and Ferry Traffic, Distinguished—Railway, Diverting Traffic from Turnpike Road.

In 1786 certain commissioners obtained statutory powers to build a bridge and buy up rights of ferry across the Suir at Waterford, charging tolls for passengers and goods, within limits defined in the Act. The terminal station of two railway companies was situated on the north bank of the Suir, and a considerable part of the commissioners' revenue consisted of tolls paid by these companies for traffic passing from their station either across the bridge, or by steam-vessels plying within the limits of the ferry, into Waterford. A third railway company now promoted a bill for an extension of its system to the north bank of the river; and by a further and independent extension, promoted in concert with the companies already established at this point, it proposed to cross the river outside the statutory limits of the commissioners, whose bridge would be five-sixths of a mile from the new railway bridge. The commissioners petitioned on the ground of competition, alleging the serious reduction of income which would follow from the loss of the existing railway traffic, and pleading that by this diversion of traffic they would be prevented from fulfilling their statutory engagements to maintain and keep open the bridge as a public highway. It was objected that the traffic of an ordinary toll-bridge and ferry was local, whereas that brought by a railway was distant traffic; and, further, that the owners of such a bridge had no more right to be heard against a railway bridge than railway companies had to be heard against tramways, or trustees against a railway which would divert traffic from their turnpike roads:

Held, that the petitioners had no *locus standi*.

The Dublin, Wicklow, and Wexford railway company promoted a bill for an extension of their line to the northern bank of the Suir, opposite Waterford, there connecting the pro-

posed line with the lines of the Limerick and Central railways, and by a further extension crossing the river by means of a bridge, towards which the other railway companies were to subscribe, and over which they would have corresponding powers. By an Act of the Irish Parliament (26 Geo. III., 1786), it was recited that "the building a bridge over the Suir at Waterford would tend to increase the trade of the said city, and by uniting the two provinces of Leinster and Munster would tend to promote agriculture and be of public utility," and a body was incorporated to purchase the existing ferry and construct a bridge. The Act provided that the bridge should be used as a common highway for ever, and authorised the commissioners to take certain tolls, and also to maintain the ferry within defined points on the river, for the carriage of cattle, passengers, and goods. The commissioners now alleged that they had expended large sums under these statutory powers; that the tolls were not only liable to all the expenses incident to the efficient maintenance of the bridge, but being rated property they contributed one-tenth part of the entire taxation upon the city of Waterford; that, being bound to provide passage for persons and goods across their bridge and ferry, the commissioners were entitled in equity as well as in strict law to the reciprocal privilege of being the sole carrier and receiving the tolls payable in respect of such traffic as would come over the bridge if not diverted therefrom; and that the diversion of traffic which would take place if this bill were sanctioned, threatened to render valueless the property of the petitioners.

The *locus standi* of the petitioners was objected to, because (1) no property and no right or interest of theirs will be affected by the bill; (2) the intended railway bridge over the navigable river Suir (which is the only part of the bill objected to by the petitioners) will not be situated within the statutory limits of their bridge and ferry, but will be situated three-quarters of a mile above the bridge, and more than half a mile above the nearest limit of their ferry. The petitioners have no statutory, common law or other rights, entitling them to be heard; (3) proprietors of a public highway toll-bridge and ferry established by Act of Parliament from the traffic over which they derive their tolls like the petitioners, are not, according to practice, entitled to be heard on the ground of competition against a bill which proposes to authorise the construction of an undertaking of a different description for the conveyance of traffic by a different method, videlicet, by a railway, more especially when the new undertaking will be situated wholly outside the statutory

limits assigned to the proprietors of such public highway, toll-bridge and ferry; (4) in any case the competition alleged is too remote and indirect to entitle the petitioners to be heard; (5) nor can they be heard on such grounds as want of public necessity for the proposed railway, insufficiency of estimate, engineering details, or injury to navigation, the petitioners not being the harbour authority having control of the river, and such harbour authority really approving and supporting the intended railway and bridge; (6) the petition discloses no grievance entitling the petitioners to a hearing according to practice.

Saunders (for petitioners): We claim to be heard on the ground of competition.

The CHAIRMAN: Do the railway company propose to make a foot-bridge?

Saunders: No, only a railway bridge. At present the entire traffic carried by the Limerick and Central railway companies, and destined for shipment at Waterford, pays toll to us, the station of those railways being at the north side of our bridge, while the city lies at the south side. All passengers and goods deposited at the station must therefore cross the bridge or ferry in order to reach Waterford, and vice versa. A judicial decision in our favour was given some time ago against the two railway companies, who were trying to evade the payment of tolls to us by carrying their goods across the river in barges. The point of arrival of the goods in these barges, though not the point of departure, was within our ferry rights, and owing to that decision the companies obtained license from us to use steam-vessels and carriages for the conveyance of certain portions of their traffic across the river or our bridge, each company paying us £320 yearly in commutation for tolls. Thus a large portion of our fixed income arises from goods conveyed under these contracts, whilst a considerably larger portion arises from passengers, goods, and cattle carried by the companies, but expressly excepted from the contracts, and paying the ordinary tolls. If the extension proposed by the Dublin company stopped on the north side of the river, we should receive the tolls from all traffic conveyed upon the company's system to that point; but by the further, and quite independent, scheme of the railway bridge, we should lose not only those tolls but the very large income now secured to us by contract with the other railway companies. We ask to be protected from the ruinous injury which must arise to our property, rights, and interests from that part of the bill which proposes the construction of the bridge, an injury which must seriously interfere with our ability to fulfil our statutory duty of

properly maintaining the bridge and ferry for the public accommodation.

Mr. RICKARDS: Were the petitioners heard in the House of Lords?

Saunders: There was a discussion on *locus standi*, and we were excluded, but there was nothing then in the bill which gave either the Waterford and Central Ireland company or the Waterford and Limerick company any special facilities or interest in the proposed bridge and extension line.

Mr. RICKARDS: That is the only material alteration?

Saunders: Yes.

The CHAIRMAN: The railway bridge is beyond the limits of the ferry. Is not the interference rather remote?

Mr. RICKARDS: What is the distance between the proposed railway bridge and your bridge?

Saunders: Five-sixths of a mile. The following cases are in point:—*Northampton and Banbury Junction Railway, Petition of Tewkesbury Severn Bridge and Road Trustees* (Smeth. 158), *Severn Junction Railway, Petition of Corporation of Tewkesbury* (Smeth. 72 & 168), *Kew and other Bridges Bill, Petition of Hammersmith Bridge Company* (1 Clifford & Stephens 118), *North British (Helensburgh Pier) case* (1 Clifford & Rickards 49), and *Greenwich and Milwall Subway Bill* (2 Clifford and Rickards 23).

The CHAIRMAN: We are rather pressed by some of the cases of competition.

Cripps, Q.C. (for promoters): The Act of 1786 prescribes the limits within which the ferry and bridge rights of the commissioners shall apply, and we do not come within those limits.

Mr. RICKARDS: The invasion of ferry rights is one point; competition is another.

Cripps: Parliament left the public right of crossing the river exactly as it stood before the Act of 1786, except within the prescribed limits, and the commissioners succeeded in their action against one of the railway companies because these limits were infringed. To justify a *locus standi* on the ground of competition, the traffic in respect of which the competition is alleged must be traffic of the same nature, and the competition must be more or less direct. Interference by a railway company with the toll on a river-bridge, as in this case, is just the same as interference with the toll on a turnpike road by a railway company running between the same points. But though in the latter case there would undoubtedly be diversion of traffic, it is not competition in respect of which the road-trustees would be heard. In like manner railways are not allowed to be heard against tramways on the ground of competition. Railway traffic differs from that

upon a bridge across which people can go on payment of tolls. A railway brings traffic from long distances, and it is new traffic, while the traffic upon such a bridge as this is existing traffic, and almost entirely local. The petitioners cannot show that the proposed bridge would carry a single ounce of traffic to accommodate which their bridge was made. With regard to the precedents cited, they may be distinguished from this case.

The COURT (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Holmes, Anton, & Greig*.

FARNWORTH AND KEARSLEY GAS BILL.

Petition of FARNWORTH LOCAL BOARD.

27th February, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas Bill—New Capital and Works—Illuminating Power in existing Act re-enacted—New Test of, proposed—Local Board, rights of, to oppose Increase of Gas Capital—To propose Purchase of Gas Undertaking—Previous Negotiations for Purchase—Existing Illuminating power unaffected—Roads, alleged further interference with—Auction Sale of new Gas Shares—Notice of to Local Board—Creates no substantial change of status—Past legislation, complaint of.

A gas company promoted a bill for the purchase of land, the construction of additional works, and the raising of new capital for the purposes of their undertaking. The bill was opposed by a local board, whose district was within the company's limits, the petitioners contending that the gas consumers would be injuriously affected by the creation of new capital, and asking for the insertion of provisions empowering them to buy the company's undertaking:

Held, in conformity with previous decisions, that as the bill proposed no increase of price, or change as regards the quality of the gas, though a new test of quality was proposed and the old standard re-enacted, the petitioners were really complaining of past legislation, and could not be heard on the

question of the purchase of the company's works, a proposal outside the scope of the bill.

The *locus standi* of the petitioners was objected to, because (1) no portion of the land to be taken under the bill belongs to them, nor will any of the proposed new works be situated within their district; (2) no road under their jurisdiction will be broken up or interfered with under the bill; (3) their complaints respecting the illuminating power and maximum price of the gas supplied by the company are directed against past legislation, as the bill proposes no alterations in previous Acts in respect of these matters; (4) the primary object of the petitioners, as appears from the allegations in their petition, is to compel the company to sell their undertaking to them, but they can have no *locus standi* to contend for the insertion of any such provisions, which are wholly foreign to the subject-matter of the bill; (5) they do not represent gas consumers, and, if they did, would not be entitled to appear, as the bill contains no provisions injuriously affecting the gas consumers, and the petitioners are not entitled to be heard against the amount of capital proposed to be authorised, or the terms upon which it is to be raised; (6) no property, right or interest of theirs is prejudicially affected and they cannot be heard conformably with practice.

Salisbury (for petitioners): The bill recites that the demand for gas within the limits supplied by the company has greatly increased, and it proposes to supply gas of the low standard of 14 candles at the present maximum price of 6s. 6d., which was fixed as long ago as the Act of 1854. The bill goes on to say that, in order to meet this demand, it is expedient that the company should be authorised to acquire additional land, construct additional works, and issue £100,000 fresh share-capital and £25,000 by loan. This capital will be expended, not exclusively upon the gas district outside our jurisdiction, but over the whole area of the company's supply. Thus the roads and streets under our control will be dealt with under the bill.

Pope, Q.C. (for promoters): We already have statutory powers to break up the Farnworth streets and roads, and those powers are in no way enlarged by the bill.

Salisbury: Still, as the public body having control over the streets, we are entitled to come to Parliament to propose new conditions in the new state of things which the bill will introduce. Then as to the provision relating to illuminating

power, if this be existing legislation there is no occasion for any new provision. Gas of 14-candle power is of very low standard, and, in point of fact, the company habitually supply gas of better quality.

Mr. RICKARDS: Is the present illuminating power 14-candles?

Pope: Yes, and we do not vary it in the bill, but as we propose to construct new works it was thought necessary to re-enact the existing provision.

Salisbury: This proposed re-enactment gives us a right to appear upon the question of illuminating power. We have another ground of *locus standi*, for the bill proposes a new test of illuminating power by means of Sugg's London argand burner, instead of by the mode prescribed in the company's existing Act. As to the proposed purchase, all we allege is that negotiations with this object have been carried on for the purchase of the company's undertaking by agreement with the local board, but that we have not been fairly met, and that it is expedient we should be empowered to buy the gasworks upon reasonable terms.

The CHAIRMAN: I do not see how an abortive negotiation, which may have been entered into in good faith or in bad faith, can give you a *locus standi*.

Salisbury: We also allege that there is no necessity for the bill, and that it is promoted simply in order that the company may have something more to sell, for they will probably divide seven per cent. upon this new capital. Moreover, the bill provides that the new shares are to be offered by public auction or tender, and that notice of the intention to sell such shares or stock shall be communicated to the local board of the districts within the company's area of supply. This is an admission of our interest, and surely entitles us to be heard as to the expediency of raising this new capital.

Pope (in reply): This case is concluded not only by principle but by repeated authority. On principle the only ground upon which petitioners can be heard against a bill, is that the bill alters their status. They cannot be heard because they are desirous of asking Parliament to insert provisions in their favour, or to carry out some scheme not within the scope of the bill itself. It is contrary, therefore, to all principle that this local board should be allowed to come here and say, "we have had abortive negotiations with the company; we wish to buy their undertaking; and to appear in order to procure clauses with that object." As regards authority, the question has been repeatedly decided. The bill will not affect the petitioners in any way. It does not alter the price or

illuminating power, and gives us no additional powers within the district of the local board. The bill simply enables us to purchase land, and erect new works, not in the petitioners' district, raising additional capital for this purpose.

Mr. RICKARDS: Why do you re-enact the clause about the illuminating power, having already got it in your present Act?

Pope: It is done for abundance of caution. The Gas Works Clauses Act provides for the illuminating power prescribed in our special Act; but in order to avoid any question as to what the special Act means, it is re-enacted in this bill in order that it may cover the gas produced both at the proposed new works and at the old works.

Mr. RICKARDS: Does the use of Sugg's burner in any way affect the test of quality?

Pope: Not in the least. This is the mode of testing in the Metropolitan gas bills, and we have adopted it as being the now recognised test. The petitioners do not allege that any change in the illuminating power is contemplated. [He was then stopped.]

The CHAIRMAN: We think that the Petitioners have no *locus standi*.

Locus standi Disallowed.

Agent for Petitioners, Lewin.

Agents for Bill, Toogood & Ball.

FORTH BRIDGE RAILWAY BILL.

Petition of THE CALEDONIAN RAILWAY COMPANY.

7th March, 1878.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; and Mr. RICKARDS.)

Railway—Competition—Diversion of Traffic, by Railway Bridge—Construction of Bridge, subscription to, authorised by competing Companies—Traffic Facilities, over system of Petitioners—Virtual Amalgamation alleged.

In furtherance of statutory powers already existing for the construction of the Forth Bridge by an independent company, a bill was now promoted authorising the North British, Great Northern, Midland, and North Eastern railway companies to subscribe capital for the purposes of this undertaking. The first-named company bound itself to send a certain proportion of traffic across the bridge when built; no such obligation

was incurred by the other three companies, who merely agreed to pay certain tolls and rates for such of their traffic as might go by this route to the north of Scotland. The bill was opposed on the ground of competition by the Caledonian company, from whose system this and the North British traffic would be diverted, and they alleged that under existing Acts they had been compelled by onerous obligations to accommodate the northern traffic of the five companies, and, at the option of these companies, would still be bound to do so, however unremunerative such traffic might be. The petitioners also urged that the bill was virtually an amalgamation bill. The promoters replied that no substantial change in the relations of the parties would be effected by the bill and that mere powers of subscription by railway companies towards an undertaking already authorised by Parliament gave an already competing company no *locus standi*:

Held, that the *locus standi* of the petitioners must be allowed.

The *locus standi* of the petitioners was objected to, because (1) no powers are sought to construct any new or competing railway; (2) the petitioners are not affected by the running powers proposed to be given to the Midland, North-Eastern, and Great Northern companies over the railways of the promoters, and over certain portions of the North British railway. No power is given to those companies to run over any lines belonging to the petitioners; (3) under the bill no traffic will be diverted from the Caledonian railway. The diverted traffic referred to in the bill and petition is traffic which, though now passing temporarily over portions of the Caledonian railway, would necessarily pass over the Forth Bridge railway as soon as the same was constructed under the provisions of existing Acts; (4) no obligation is imposed by the bill on the Midland, the North-Eastern, or Great Northern companies (as in the petition alleged) to send all or any of their traffic by the Forth Bridge railway; and, though the North British are bound so to send their traffic this can give the Caledonian company no right to be heard against the bill, as the Forth Bridge railways were always promoted as a part of the North British system. And it was part of the arrangement come to in 1865 that the Forth Bridge should be part

such system, and it was the distinct intention of Parliament, as expressed in the North British and Edinburgh Railway Company's Amalgamation Act, 1865, section 46, that when the direct route through Perth was completed it should form a route for the conveyance of traffic of the English East Coast companies; (5) the financial and other arrangements in the bill between the Forth Bridge railway company and the Midland, North-Eastern, and Great Northern companies relate simply to arrangements between themselves, and do not entitle the petitioners to be heard against the bill; (6) no new competition is created by the bill. The Forth Bridge railways are already authorised by existing Acts, and no powers are sought by the bill to construct any additional lines, and the petition does not show that any such competition will be caused by the bill; (7) the running powers and facilities referred to in the petition were granted as a matter of bargain, and as part of the consideration and price paid at the time that the Acts authorising the amalgamation referred to were passed. At that time part of the arrangement come to was, that a railway should be constructed across the Forth in competition with the Caledonian railway. That Act was sanctioned in 1873, and there is nothing in the bill which alters the situation of the parties, or imposes any new or more onerous burden upon the petitioners; (8) the power in the bill of entering into agreements with the four companies for the interchange of traffic does not affect the interest of the petitioners; (9) the bill deals simply with the raising of the capital authorised by the Forth Bridge railway Acts; the complaints in the petition refer altogether to past legislation; and there is nothing in the bill which interferes with the petitioners' rights so as to entitle them to a *locus standi*.

Venables, Q.C. (for Caledonian company): The Forth Bridge railway, though a separate undertaking, is practically North British, and the main object of the bill is to sanction a combination between four great railway companies, three English and one Scotch, for the purpose of forcing all traffic passing over their lines between England and the north of Scotland to adopt the Forth Bridge route, instead of leaving that traffic free, as at present, to pass over either the Caledonian or the North British systems. Thus, traffic will be abstracted from the Caledonian line which we now enjoy, and but for such combination would continue to enjoy. With this object the bill seeks to induce capitalists, by a guarantee of 6 per cent., to provide more than £1,500,000 to be spent on an engineering work of unexampled difficulty, which although sanctioned thirteen years ago has never been so much as

commenced. (The learned counsel referred at great length to the provisions of previous Acts affecting the North British and Caledonian traffic, which he contended were violated in spirit by the diversion of traffic which would occur under the present bill.) This is practically an amalgamation of the Forth Bridge railway with the systems of the other companies, and the Caledonian have exactly the same right to be heard on the question of the guarantee or contribution on the part of these companies to the Forth Bridge as they would have if these companies, the North Eastern, the Great Northern, and the Midland were, in so many words, amalgamated with the Forth Bridge company. The following case is in point:—*Glasgow and South Western Railway Bill, Petition of Caledonian Company* (1 Clifford & Rickards 71.) We are also entitled to be heard, because of the running powers and facilities, of a very stringent and onerous character, granted in 1865 over our lines to the Midland, North British, North Eastern, and Great Northern companies to and from Perth and Aberdeen. These running powers and facilities were granted on the understanding that they were necessary for enabling the four companies to conduct their traffic to and from places in the north of Scotland over the railways then transferred to us; and it would now be unfair to us that these companies should obtain an independent route, as proposed by the bill, while they retain the powers above referred to over our lines. And this is still more unfair, when these companies are not only enabled by the bill to send all their traffic by that independent route, but in the case of the North British are expressly bound, and in that of the three other companies are induced by direct pecuniary guarantee to do so.

Clerk, Q.C. (for promoters): The bill does not alter the relation of the parties. There is no obligation in the bill on the Midland, the Great Northern, or the North Eastern to send any traffic by the North British route destined for the Forth Bridge railway.

Venables: There is a legal obligation on the North British.

The CHAIRMAN: And a pecuniary inducement as regards the others. Mr. Venables says this is in point of fact an amalgamation scheme.

Mr. RICKARDS: One of the objects of the bill is to provide the means for the construction of the bridge. It is for that purpose these companies combine?

Clerk: No doubt.

Mr. RICKARDS: Without that combination, it might be that this line would not be made at all?

Clerk: Assuming that, it still gives the Caledonian company no *locus standi*. If a company

already competing with another company seeks to raise fresh capital in order to complete its undertaking, the competing company cannot come in and object.

Mr. RICKARDS: Are the East Coast companies and the Midland and North British companies to get a *quid pro quo* for rendering this pecuniary assistance?

Clerk: No, there is no consideration. They are under no obligation to send an ounce of traffic. On the contrary, they will have to pay a toll of nineteen miles for a bridge which is only one mile long. This is not a case of amalgamation, and there is nothing in the bill altering present legislative arrangements. The mere fact that one company takes power to subscribe to the capital of another company does not give an outside company a *locus standi*; does not create an amalgamation, or put these companies in any new relation to the Caledonian.

The Court (after deliberation): We think in this case the *locus standi* must be *Allowed*.

Agents for Petitioners, *Grahames & Wardlaw*.

Agents for Bill, *Simson, Wakeford & Simson*.

GLASGOW CORPORATION TRAMWAYS BILL.

Petition of (1) GLASGOW AND GARESCUBE TURNPIKE ROAD TRUSTEES; (2) COMMISSIONERS OF POLICE OF THE BURGH OF MARYHILL.

10th April, 1878.—(Before **Mr. PEMBERTON, M.P.**, in the Chair; **Mr. RICKARDS**, and **Mr. BONHAM-CARTER**.)

Tramways—Local and Road Authorities, consent of—S. O. 22—Tramways Act, 1870, Section 26—Jurisdiction of, over two-thirds of Tramway—Examiners, decision of under S. O. 22—Effect of, upon Right to Petition against Tramway Bill.

The corporation of Glasgow sought power under the bill to construct 26 new lines of tramways, six miles six furlongs long, in the city and neighbourhood. The petitioners were (1) turnpike-road trustees, and two of the proposed tramways, between five and six furlongs in length, would run upon the road under their management. Petitioners (2) were the local authority within the same district, and opposed the construction of the same two tramways on the same ground, namely, that the roadway was

unsuitable for tramways. Both petitioners had been applied to under S. O. 22,* and had refused their consent, but the Examiners allowed the bill to proceed under the proviso in S. O. 22, that where the proposed tramways will run through two or more districts, the consents of "the local and road authorities, having jurisdiction over two-thirds of the length of such proposed tramways, shall be deemed to be sufficient." In this case, most of the proposed tramways would run within the promoters' own jurisdiction; and, the requisite consents having been thus procured, the promoters now contended that the remedy of both petitioners was exhausted by their appearance before the Examiners, and that neither S. O. 22 nor the Tramways Act (section 26) con-

* S. O. 22, House of Commons (consents in case of Tramway Bills). "In cases of bills to authorise the laying down of a tramway along any public highway, the promoters shall obtain the consent of the local authority of the district or districts through which it is proposed to construct such tramway, and where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority. For the purposes of this order, the local and road authorities in England and Scotland shall be the local and road authorities mentioned in section 3 of 'The Tramways Act, 1870,' and in Ireland shall be the grand jury of the county in respect to any highway or portion of highway within the jurisdiction of such grand jury; and in respect to highways wholly or partly within any city, borough, town corporate, or other place or district in which the public roads are not under the control of the grand jury of the county, shall be the respective local and road authorities of such city, borough, town corporate, or other place or district mentioned in section 38 of 'The Tramways (Ireland) Act, 1860.' Provided that where it is proposed to lay down any tramways in two or more districts, and any local or road authority having jurisdiction in any such districts does not consent thereto, the consents of the local and road authority or the local and road authorities having jurisdiction over two-thirds of the length of such proposed tramway shall be deemed to be sufficient."

templated a further right on their part to oppose the bill in Committee :

Held, that in such a case the right of petition by road and local authorities is not concluded by the decision of the Examiners under S. O. 22, and *locus standi* of both petitioners allowed.

(*Per. Cur.*) The orders which are classed as Examiners' S. O. relate only to the fulfilment of certain preliminary formalities and conditions before the bill is introduced.

The *locus standi* of the turnpike-road trustees was objected to, because (1) the petitioners are, within the meaning of S. O. 22, the road authority of the district in which it is proposed to lay down tramways No. 1 and 1a, but these tramways are in length only five furlongs of double tramway, whereas the length of the whole of the tramways proposed in the bill is six miles six furlongs of double tramways, and the promoters proved before the Examiners that they had obtained the consent of the local and road authorities as required by S. O. 22 in respect of the proposed tramways; (2) such proof having been given by the promoters, the petitioners, who are the road authority having jurisdiction over a small portion only of the districts in which the proposed tramways are to be laid down, are not entitled to be heard in opposition to the bill or any part thereof; (3) the petitioners do not show any interest in the objects and provisions of the bill entitling them to be heard against it.

The *locus standi* of the commissioners of police, as the local authority of the district through which the proposed tramways 1 and 1a would run, was objected to on the same grounds.

Pember, Q.C. (for the turnpike-road trustees) : Tramways 1 and 1a will be formed along their whole length upon the road under our management, and we refused to consent to their formation, believing that the road is unsuitable. We thought this was conclusive of the question, but the Examiners held that our consent at that stage of the bill was unnecessary, as the two-thirds' consent had been obtained under the proviso of the S. O. Most of the 26 new lines will be, in fact, within the jurisdiction of the promoters themselves, and 22 of them are situated at a distance of more than two miles from tramways 1 and 1a. Although, however, our consent has been held not to be an indispensable prerequisite to the consideration of that part of the bill which authorises the construction of these two tramways, we submit that Parliament never

intended by the proviso in S. O. 22 to exclude the consideration in Committee of the views held by road trustees or local authorities as to the expediency of constructing tramways upon the road under their management and jurisdiction. The S. O. allows the bill to proceed upon proof of the consent of two-thirds, but does not exclude the right of the remaining one-third to be heard against the bill upon its merits. If the consents of two-thirds were to be an estoppel on future opposition by the one-third who dissent, a great hardship would be inflicted on the latter, and the public interest would suffer in this particular locality. The corporation of Glasgow might go for a tramway two miles long outside their limits, and in order to shut the mouths of the road authority having jurisdiction over those two miles of road, they might at the same time profess to construct six miles of tramway within their own jurisdiction. Their consent would thus exclude opposition if this technical construction of S. O. 22 is allowed to prevail.

Grahame, Parliamentary Agent (for the police commissioners) : Our case is the same as that of the road trustees, and the decision of the Court will govern both cases.

Pope, Q.C. (for promoters) : By S. O. 22, taken in conjunction with The Tramways Act, Parliament has provided a distinct and specific protection for road and local authorities. It is not a remedy by petition. Under the S. O. they are to have a distinct veto upon the bill, unless the promoters can obtain the consent of two-thirds, which, in the words of the S. O., "shall be deemed to be sufficient."

Mr. RICKARDS : What is it consent to ? It is consent to the introduction of the bill ?

Pope : No, it is consent to proceeding with the bill. It simply transfers to the Examiners, instead of to the Committee, the right to listen not to a discussion upon merits, but simply to a discussion upon the question whether the local and road authorities have consented.

The CHAIRMAN : Whether certain necessary formal preliminaries have been complied with ?

Pope : I submit that the express protection given to the local and road authorities supersedes the general protection which they otherwise might have had. By the Tramways Act (section 26) the promoters of a bill, which is proceeded with in conformity with S. O. 22, and which has received the two-thirds' consent, are empowered from time to time to open and break up any road, subject to certain regulations. The local and road authorities must receive notice of the promoters' intention to make the tramway, and the roads must not be broken up except under the superintendence

and to the reasonable satisfaction of the authorities, without regarding whether they are or are not consenting authorities. Thus, taking the S. O. and the Act together, when once the two-thirds' consent has been obtained, the protection of the road authority is not by petition upon general merits against the bill, but it is the protection they enjoy under the General Act which enables them to prevent, after notice, the breaking up of roads, except under the safeguards imposed by section 26. If road or local authorities, having jurisdiction over two-thirds in length of the proposed tramway, object to the bill, the promoters cannot proceed at all. But to admit the right of the minority to petition, notwithstanding the consent of the majority, is to enable the minority to say that the protection given them by the general law is insufficient. This is exactly what Parliament has said shall not be done, for Parliament has declared that the general statutory protection shall be sufficient for all local and road authorities whenever a proportion of two-thirds of the public interests affected have said that they think this general statutory protection will be sufficient.

Mr. RICKARDS: I think, with regard to all these orders which are classed as Examiners' S. O., they relate to the fulfilment of certain preliminary formalities and conditions before the bill is introduced.

The CHAIRMAN: The *locus standi* of both Petitioners is Allowed.

Agents for Petitioners, *Grahames & Wardlaw.*

Agents for Bill, *Simson, Wakeford, & Simson.*

GLASGOW MUNICIPAL EXTENSION BILL.

Petition of MAGISTRATES AND COMMISSIONERS OF POLICE OF GOVANHILL.

13th March, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Extension of Municipal Boundaries—Neighbouring Corporations—Borough Magistrates—Debateable Land—Previous Applications by Petitioners to acquire—Res Judicata—Absence of Present Interest—Commissioners of Police—Not Representatives of Ratepayers.

The magistrates of Govanhill, who were also the police commissioners of the burgh, petitioned against a bill for extending the boundaries

of the neighbouring burgh of Glasgow on the ground that the promoters proposed to annex land which the petitioners had already endeavoured to include within their own municipality. They had previously applied to the sheriff for powers over the land in question, but their application had been refused, on the ground that it was not sufficiently populous to make it a fit subject for municipal jurisdiction, and they now sought to prevent its addition to Glasgow, alleging their intention to renew their attempt to incorporate it at some future time. They also claimed to be heard as the police authority of the burgh, the police supervision of which would be increased in cost, and would become less efficient if the district in question were withdrawn from the county jurisdiction and annexed to Glasgow. It was objected, in reply, that neither as magistrates nor as police commissioners did the petitioners represent the inhabitants of the burgh for rating purposes:

Held, that in the absence of any present interest in the land in question, the mere fact that the petitioners contemplated its absorption within their burgh at some future period afforded no ground for a hearing, the matter having already been decided against them, and being no longer *sub judice*; and that on other grounds the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or property or rights or interests of theirs are taken or interfered with under the bill; (3) no portion of the land proposed to be annexed to the burgh of Glasgow is situated within the jurisdiction of the petitioners as police commissioners, nor do they in any way represent it; (4) the petitioners not being owners, occupiers, or ratepayers cannot represent the said district, and not being its local or municipal authority cannot be heard as to the effect of the bill upon local government and the incidence of taxation; (5) several allegations in the petition are untrue in fact and irrelevant; (6, 7, 8) the fact that the petitioners are the police authorities for a district adjoining, but distinct from that proposed to be annexed, confers upon them no right of being

heard, nor have they any interest in the powers sought by the bill; (9) the interests of the inhabitants and ratepayers of the district proposed to be annexed are represented by other petitioners, viz., the commissioners of supply of the county of Lanark which comprises the said district; (10) no new charge or burden is imposed upon the petitioners' police district represented by the petitioners; (11) the petition discloses no ground for a hearing according to practice.

Shiress Will (for petitioners): The bill proposes to include within the boundaries of Glasgow a piece of land which has long been a bone of contention between Glasgow and the burghs outside it.

The CHAIRMAN: Under whose jurisdiction is the piece of land in question?

Will: The county of Lanark.

Mr. RICKARDS: Are the magistrates of Lanark petitioning against the bill?

Pope, Q.C. (for promoters): No; only as regards compensation in respect of rates.

Will: When Govanhill was constituted a burgh, the sheriff, on the opposition of the corporation of Glasgow, refused an application to include this piece of land in the burgh of Govanhill, on the ground that it had better remain open until it had become more populous. That being so, the corporation of Glasgow now come for powers to include this open land in their municipality. The case of the *Glasgow Corporation Bill, Petition of Magistrates, &c., of Crosshill* (2 Clifford & Stephens 224) is in my favour.

The CHAIRMAN: The question there was still *sub judice*. Here you have had a decision of the sheriff against you, and have not renewed the application.

Mr. RICKARDS: Your case here is not analogous to that of two railway companies applying for powers over the same land at the same time, but only to a case in which a second railway intends to apply for powers in the future. Your application is no longer *sub judice*. The utmost you can say is that you intend acquiring this piece of land at some future time.

Will: We also claim a *locus standi* on the ground that the county rates to which the burgh of Govanhill is liable will be increased if this "No man's land" is withdrawn from the county jurisdiction, and such withdrawal will not only render our police supervision less efficient, but will enhance its cost.

Pope (in reply): The petition is not the petition of ratepayers within Govanhill, it is the petition of the magistrates and commissioners of police of Govanhill, who have nothing to do with paying the county rates, and do not

represent the inhabitants for purposes of rating.

The CHAIRMAN: We think the Petitioners have no *locus standi*.

Agent for Petitioners, *Robertson*.

Agents for Bill, *Simson, Wakeford & Simson*.

GOVAN BURGH BILL.

Petition of (1) CORPORATION OF GLASGOW; (2) ROYAL INCORPORATION OF HUTCHESON'S HOSPITAL AND TRADE HOUSE AND INCORPORATIONS OF GLASGOW; (3) JOHN LAING.

18th March, 1878.—(Before Mr. BRISTOWE, M.P.; Chairman; Sir HARCOURT JOHNSTONE, M.P., Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Police Commissioners — Sanitary Authority — Common Lands in Scotland — Proposal to appropriate—Previous Sale of Portion of—Power to Apply Purchase-Money—Heritors and Proprietors—Rights of, in Common Lands—Lands Clauses Consolidation (Scotland) Act —General Police and Improvement (Scotland) Act, 1862.

Against a bill promoted by a body of police commissioners in Scotland, as the sanitary authority of the district, to enable them to appropriate certain common lands for public purposes, a neighbouring corporation and two public corporate bodies petitioned, as heritors, under the Common Law of Scotland, of the commonity in question. They also petitioned to prevent the application by the promoters of the purchase-money of other common lands lodged in bank by the purchasers to the credit of any person who could prove his claim thereto. It was objected that the petitioners could show no title either to the lands already sold or those proposed by the bill to be appropriated. An individual heritor also claimed, on similar grounds, to be heard against the appropriation authorised by the bill:

Held, that the rights of all the petitioners were such as to entitle them to a *locus standi* against the bill.

The *locus standi* of the corporation of Glasgow was objected to, because (1) in so far as the petition relates to the exaction by the promoters of police rates from the trustees of the Clyde navigation, they have no right to be heard, inasmuch as the rates in question are not levied, or alleged to be levied, from the petitioners, and the bill contains no provisions in any way relating to those rates; (2) in so far as the petition relates to the common lands proposed to be dealt with by the bill, and the disposal of the price of certain common lands already sold, the only interest alleged by the petitioners is based upon a statement that all the heritors and proprietors in the parish of Govan are interested in the old common lands, which is not true either in law or in fact; (3) the petitioners do not allege, nor is it the fact, that they have any property in the burgh of Govan; (4) the petition alleges no facts or reasons entitling them to a hearing according to practice.

The *locus standi* of the royal incorporation of Hutcheson's hospital and trades house and incorporation of Glasgow was objected to, because (1) they have no interest as heritors and proprietors either in the common lands, which have been sold to the Clyde navigation trustees, or in the common lands proposed to be further dealt with by the bill, nor have they any property in the burgh of Govan; (2) they have no interest in the character and constitution, or status, of the burgh of Govan, and all provisions relating to these subjects are to be struck out of the bill; nor (3) do they allege any grounds for hearing according to practice.

The *locus standi* of John Laing was objected to, because (1) no lands of his are proposed to be taken or interfered with; (2) his lands are not, as stated in the petition, adjacent to or intersected by the commons mentioned in the bill; (3) he has not nor does he allege any right or interest in the said commons entitling him to be heard; (4) he is not entitled to be heard as a ratepayer or inhabitant, because he is a single ratepayer or inhabitant having no distinct interest apart from others, and the bill is promoted by the municipal representatives of the burgh; nor does he allege how his interests as a ratepayer or inhabitant are affected; (5) he cannot be heard according to practice.

Pope, Q.C. (for petitioners (1)): The bill enables the present police commissioners of the Govan burgh to appropriate what are called common lands within their district, and in these lands we have an interest as heritors and proprietors. In 1864, part of the parish of Govan was formed into a police burgh, under the powers of the General Police and Improve-

ment Act (Scotland), 1862, but the constitution of the police district in no way interfered with the common lands situated in the district, in which common lands we are interested. Although the bill proposes to incorporate the provisions of the Lands Clauses Consolidation (Scotland) Act with respect to common lands, it does not secure the carrying out of these provisions. Besides this proposed appropriation of common lands, the bill authorises the police commissioners of Govan to uplift and apply for their own purposes the price of certain common lands of the parish, acquired by the trustees of the Clyde navigation, at present consigned in bank to the parties entitled thereto. This sum the police commissioners have no right to appropriate, as it belongs to all the heritors and proprietors of common lands purchased by the trustees, among whom we are included. Our rights as heritors are clearly shown in Erskine's *Institutes of the Law of Scotland*, which points out that, under an Act of 1695, the rights of individual heritors in common lands are of such moment that any heritor may apply to the Lords of Session to determine upon the rights and interests of all parties concerned, and value and divide the same. The Act of 1695 even goes the length of enacting that this right to claim a division of common lands extends to every person "having a bare right of servitude upon the property." But the bill proposes to empower the promoters, who are merely the sanitary authority within the district, to extinguish all rights whatever in these common lands.

Mr. RICKARDS: How was this sale effected to the Clyde trustees?

Pope: By a committee which was appointed, and which was supposed to represent the heritors, but the Clyde trustees did not pay the money to this committee, and it was lodged in the bank until some one came forward who could give them a title. The promoters now seek a Parliamentary right to the money to the exclusion of all others who might claim as heritors.

Littler, Q.C. (for promoters): They must prove their title as heritors.

Pope: We claim under the Common Law of Scotland, which gives us a title *pro indiviso*.

Littler (in reply): The commissioners are the successors to the committee who sold the land to the Clyde trustees. At a meeting of the inhabitants a resolution was adopted, that for the future the police commissioners should be the committee. We deny that the heritors of the parish have any common rights. In Bell's *Principles of the Law of Scotland* a heritor's right is defined as "neither a common property nor a common interest but a joint perpetual use."

The corporation of Glasgow have not been in the perpetual use of this land.

The CHAIRMAN: If not the heritors, what class of persons do you say are the persons interested in the commonry?

Little: Those who produce a title to it. The petitioners have not shown their title by any grant or by proving perpetual use.

The CHAIRMAN: The *locus standi* of the Corporation of Glasgow is *Allowed*.

Simson, Parliamentary Agent (for petitioners (2)): The same question is involved in our case. The two corporations are large landed proprietors within the district affected by the bill and as such heritors of the common lands in question.

Pope, Q.C. (for petitioner (3)): This petitioner is also a heritor within the burgh, and his claim to be heard rests on precisely the same right as that of the other petitioners, except that he is an individual instead of a corporate body.

Little, Q.C. (for promoters): After the previous decision we shall not attempt to exclude the petitioners from being heard.

Locus standi of all the Petitioners *Allowed*.

Agents for Petitioners (1), (2) and (3), *Simson, Wakeford & Simson*.

Agents for Bill, *Grahames & Wardlaw*.

GREAT WESTERN RAILWAY BILL.

Petition of (1) DUKE OF BEAUFORT.

20th and 21st March, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH, and Mr. RICKARDS.)

Railway—Extension of Time—Agreement with Landowner to Purchase Lands—Reference in Agreement to Original Act—No Time Specified for Completion of Purchase—How far Implied—Absence of Notice to Treat—Agreement to Purchase, how far an Equivalent—Plans sent, Effect of—Landowner quâ Creditor of Company—Equitable Interest in Lands.

A railway company, in 1872, applied to Parliament for a bill, under which they scheduled the petitioner's land. The petitioner withdrew his opposition to the bill on the company's agreement to purchase the lands upon certain conditions, and the bill became law. The agreement did not form part of the

bill, but contained a reference to it by being declared to be "subject to the passing of the Act." In 1876 the company, with the assent of the petitioner, obtained an extension of time for carrying out the provisions of the original Act. The promoters now came for a further extension of time. The petitioner claimed to be heard on the ground that such an extension had never been contemplated under the agreement, and that he had received no notice to treat. The promoters urged that no time for the purchase of his land had ever been stipulated under the agreement, and that he was merely a creditor of the company in occupation of the land at their pleasure:

Held, that although no time had been named for the purchase of the petitioner's land in the agreement, yet, inasmuch as reference was made to the original Act in that agreement and the present bill sought to extend the time limited by the Act, the petitioner was entitled to be heard against the bill, while he was not estopped from opposing as a creditor of the company, never having received notice from them to treat for the lands in question.

The *locus standi* of the petitioner was objected to, because the only provision of the bill complained of in the petition is that relating to the proposed extension of time for the completion of certain railways authorised by the Great Western Railway (Swansea Canal) Act, 1872, but such extension of time will not in any way vary the agreement referred to in the petition, or the rights of the petitioner thereunder, and he is not on that or any other ground entitled to be heard against the bill.

Granville Somerset, Q.C. (for petitioner): The bill takes power to extend the time for the completion of certain railways authorised by the Great Western Railway (Swansea Canal) Act, 1872, by which Act the Great Western company obtained powers for acquiring, besides the Swansea canal, a canal of which the Duke of Beaufort is proprietor, forming part of the Swansea canal. The duke opposed that bill, but between the time of its passing the House of Commons and going to the House of Lords, negotiations were entered into between the company and himself by which the company agreed to buy the canal upon certain terms, and

these terms were embodied in the Act of 1872. By that Act, the time for the taking of lands and for the completion of works was limited to five years, and the 38th clause empowered the company to make terms with the Duke of Beaufort for the purchase of his canal, and of certain lands comprised within the limits of deviation. In 1876 the company got another Act which extended these powers over our land for two and a-half years, but this was again by agreement with us, and they now seek under the bill to extend these powers for a year and a-half more. In the agreement no specific piece of land is pointed out, and as the duke has land all along the canal, the company can take whatever land they like within certain limits of deviation.

Mr. RICKARDS: Does this bill extend to the compulsory purchase of land as well as to the completion of works?

Saunders (for promoters): No.

Granville Somerset: It is the same thing for us practically. If the bill passes we shall be in this position, that up to July, 1880, we shall not be able to deal with any of our land within the limits of deviation.

The CHAIRMAN: You contend that the agreement was supposed to operate during the time limited by the Act of 1872 for the completion of the works, and it cannot be said that you agree to any extended period for its fulfilment?

Granville Somerset: Yes, this case must be distinguished from *Lord Lyttelton's* case (*Smethurst*, 110) and the *Teign Valley Railway* case (1 Clifford & Stephens 34). Here we have had no notice of what land the company propose to take. We have only had a sketch with an imaginary line sent to us. The land they propose to take is utterly undefined.

Mr. RICKARDS: In the cases you have referred to the landowners had ceased to be the landowners in fact.

Saunders: The Duke of Beaufort is merely a creditor of the company. He has only the occupation of the land, which has passed to the company equitably. We have sent in plans showing that we propose to take certain lands.

Mr. RICKARDS: Plans will not do by themselves. There must be a notice to take. You must show not only that a piece has been taken here and there, but that every fraction of the land covered by this agreement, which extends to the whole line within the limits of deviation, has passed from the duke to the company.

Granville Somerset: Their power over our line is limited by the agreement of 1872, which was afterwards extended, as far as time was concerned, by agreement in 1876. They cannot further vary that agreement without our con-

sent. (*Whitby, Redcar, and Middlesbrough Union Railway Bill*, 1 Clifford & Rickards 199; *East and West Junction Railway Bill*, 2 Clifford & Stephens 141; *North Metropolitan Railway Bill*, *Ib.* 117; *Glasgow and South Western Railway Bill*, *Ib.* Vol. I., 29.)

Saunders (in reply): The agreement for the purchase of the petitioner's land is practically a notice to treat, and no party has a right to be heard against an extension of time bill after such notice. The agreement contained no provision whatever with regard to the time within which this land was to be purchased, nor does this bill take any further extension of time for the completion of the purchase.

Granville Somerset: The agreement says, "subject to the passing of this Act."

The CHAIRMAN: The agreement certainly appears to have had in contemplation the passing of the Act, although the omission as to time is a grave one on the part of the petitioner. As to the bill not extending the time for the compulsory purchase of land, as regards the petitioner it is the same thing, for the power of purchase will continue as long as the powers of the company to construct works continue. Under the circumstances of the case we think the Duke of Beaufort's *locus standi* must be *Allowed*.

Agent for Petitioner, *Bell*.

Petition of (2) SHARPNESS NEW DOCKS AND GLOUCESTER AND BIRMINGHAM NAVIGATION COMPANY.

Competition between Railways and Canals—Railway Company proposing to acquire undertaking of Towing Path Companies—Obligations maintained by Bill—Canal Owners—Carriers and Freighters—Apprehended Obstruction of Canal Traffic—Chain of Water Communication, threatened interruption in—Navigation Commissioners—Creditors petitioning—Representation of Shareholders by Directors—Amalgamation—Shareholders in Amalgamating Company petitioning against Amalgamation.—S.O. 133.

A railway company sought power to acquire the undertakings of two towing path companies along portions of a river adjoining at either end the canals of the petitioners. The promoters' railway served the traffic of the same district as that traversed by the petitioners' canals, and the petitioners objected that the acquisition of the towing-

paths would enable the promoters as their competitors to obstruct the canal traffic, which necessarily passed over the portion of the river skirted by the towing paths, the river in fact forming one link in a chain of water communication. They also endeavoured to strengthen their claim to a *locus standi* by reference to pecuniary assistance which they had afforded to the river commissioners under statutory provisions, but this argument was disallowed, the petitioners being only creditors of the commissioners. The promoters urged that all the obligations of the towing-path companies would, under the bill, be transferred to themselves, and that it could not be their interest to injure the water traffic :

Held, that the transfer of the control of the towing-paths to the promoters would place them in a better position to compete with the petitioners as carriers and freighters, and that the latter were therefore entitled to be heard against the bill.

The petitioners were themselves shareholders in one of the towing-path companies proposed to be transferred, but it appeared that the shareholders had had no opportunity of dissenting from the proposed sale of their property under S. O. 138, and the Court declined to exclude the petitioners from a hearing on the ground of representation.

The *locus standi* of the petitioners was objected to, because (1) their petition discloses no such interest in the two towing-path companies referred to therein, or in the vesting of the said companies in the promoters, as to entitle them to be heard ; (2) the Gloucester and Worcester horse towing-path company do not oppose the proposed vesting, and the petitioners are not entitled to be heard as shareholders in that company against the bill ; (3) the fact of the promoters having advanced money to the Severn commissioners as alleged does not entitle them to be heard ; (4) so far as regards the dependence of the petitioners' liabilities and obligations upon, and their consequent interest in, the amount of tolls received by the Severn commissioners, the loss (if any) consequent upon the proposed vesting would fall primarily upon the promoters and the Severn commissioners, and the said commissioners have petitioned against the bill, and their *locus standi* is not objected to,

and the petitioners are represented by them, and are not entitled to be heard upon the same matter ; (5) there is no such case of competition or interference with competition disclosed in the petition as entitles the petitioners to be heard against the bill.

Granville Somerset, Q.C. (for petitioners) : We are the owners of a canal from Sharpness point on the Severn to Gloucester, and again from Worcester to Birmingham, the intermediate link in the water communication between Gloucester and Worcester being the river Severn, which is under the management of the Severn commissioners. The promoters take power to acquire either for themselves solely or jointly with the Severn commissioners the undertakings of two towing-path companies, who are proprietors of the towing-paths along the Severn between Gloucester and Worcester. Although we have nothing to do with the management of the river Severn, we have Parliamentary powers to carry goods on all the canals and waters in communication with our own canals, and therefore we have a direct interest in the proper maintenance of the towing-paths along this portion of the Severn. As such carriers, we are competitors with the Great Western along this route. The bill (clauses 34 to 37) not only transfers the undertakings of the companies to the promoters, but gives them power to enter into any agreements and arrangements they may find conducive to the carrying on of those undertakings. Besides our interest as carriers and freighters in keeping open the water communication along the Severn we have an interest in the Severn commission as having lent them large sums of money under the powers of an Act obtained by us in 1869. The Great Western company are already competitors with us for traffic between Gloucester and Worcester, and obtained a *locus standi* on the ground of competition against our bill in 1874 (1 Clifford & Rickards 74). If this bill passes it will be their interest, as our competitors, to obstruct the traffic along the Severn, which, as owners of the towing paths, they will be in a position to do.

Saunders (for promoters) : The 36th clause of the bill expressly maintains all the obligations of the towing-path companies. With regard to the power to make agreements, contained in clause 37, that is not a roving power but only relates to agreements for vesting the towing-path undertakings in us. We are directly interested in maintaining the navigation along the Severn between Gloucester and Worcester, as under an Act of 1845 we are interested to the extent of £14,000 a-year in making up any deficiency that may arise upon the Severn navigation. If anybody is entitled to be heard it is the Severn

commissioners, whose claim to a *locus standi* against the bill we allow. The petitioners are represented on the board of those commissioners as owners of the Worcester and Birmingham canal. With regard to one of the towing-path companies, the Gloucester and Worcester company, the petitioners are shareholders in it, and cannot be heard by S. O. 133.

Granville Somerset: As to that point, the Gloucester and Worcester towing-path company do not promote the bill, and they have not summoned any general meeting of shareholders, so that we have had no opportunity of dissenting from the proposed acquisition of the company by the promoters.

Saunders: We are not asking for taxing powers, as was the case in the *Clyde and Cumbrae Trusts* (2 Clifford & Stephens 157); these are charges for services rendered. We could not control the rates to be charged for towing-horses.

Mr. RICKARDS: The Great Western company could raise the rates to the maximum price, which may not be charged by the present towing-path companies.

The CHAIRMAN: Although you have at present a pecuniary interest in keeping up the Severn navigation, you might have a greater interest at another time in withdrawing the traffic from the water-system on to your railway, and then the acquisition of these towing-paths would become a formidable instrument in your hands as competitors with the petitioners.

Saunders: At any rate the pecuniary interest of the petitioners in the Severn commission confers no right on them to be heard.

Mr. RICKARDS: We have decided that mere creditors have no *locus standi*.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed* against clauses 34 to 37 inclusive, and so much of the preamble as relates thereto.

Agent for Petitioners, *Bell*.

Agents for Bill, *Sherwood & Co.*

GREAT WESTERN AND SOUTH DEVON RAILWAY COMPANIES BILL.

Petition of (1) EAST CORNWALL RAILWAY COMPANY.

25th March, 1878. — (Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Amalgamation—Railways—Broad Gauge—Rights of Narrow Gauge Companies—Third Rail—Running Powers—Use of Station—Railways Clauses Act, 1863, Part V.—Effect of.

A bill for the amalgamation of the South Devon company with the Great Western company was opposed by the East Cornwall company, who feared that rights which they possessed over the South Devon line might not apply to the amalgamated undertaking. The bill incorporated Part V. of the Railways Clauses Act, 1863, but likewise (by clause 6) declared that, notwithstanding the amalgamation, any provisions of the South Devon Acts which before the amalgamation applied exclusively to the South Devon undertaking, or to that company, should continue so to apply, and not to the Great Western undertaking, or company, and *vice versa* as to the Great Western Acts:

Held, that clause 6 of the bill did not over-ride, but must be read with the provisions of the General Act, and that as the petitioners would have against the amalgamated company the same rights which they now had against the South Devon company, they were not entitled to a hearing.

The *locus standi* of the petitioners was objected to, because (1) the bill did not alter the provisions of former Acts as alleged, and petitioners were not entitled to ask that those provisions should be re-enacted in the bill; (2) the allegations as to the effects of the proposed amalgamation were unfounded, and petitioners were not entitled to be heard in respect thereof, nor were they entitled to be heard on behalf of the public with respect to the alleged loss of accommodation; (3) no ground was disclosed by the petition upon which they were entitled to be heard.

Batten (for petitioners): Our line joins a portion of the South Devon system, which the bill amalgamates with the Great Western railway. From the year 1846 Parliament has continuously imposed an obligation on these broad-gauge lines that whenever they are reached by a narrow-gauge railway, they shall, if required, lay down a third rail, so as to render traffic interchangeable. Further than that, running powers have been given to us, with the right of using the South Devon stations, and even of requiring portions of the line to be doubled. If such clauses were necessary formerly, they are doubly necessary now, in the face of the proposed amalgamation.

Pope, Q.C. (for promoters): Admitting all your existing rights over the South Devon system,

the Railways Clauses Act, 1863, will preserve them over the same system when amalgamated.

Batten : My present rights affect not merely the system, but the shareholders of the South Devon company. I can call upon them to execute works, to lay down rails, build stations, and expend their money. Whereas, by clause 6 of the bill, the provisions of the South Devon Acts are not to apply to the Great Western undertaking, or *vice versa*, at the same time clause 4 terminates the separate existence of the South Devon company, who will no longer have any shareholders, secretary, or common seal to be proceeded against.

The CHAIRMAN : Does not the bill, in incorporating the General Act, keep alive the obligations of the South Devon company ?

Batten : It would do so, but for clause 6.

Pope : All clause 6 says is, that an obligation on any part of the South Devon undertaking (e.g., running powers) is not to extend all over the Great Western system, but is to remain, as it formerly was, of local application. Clause 6 does not vary or repeal any of the South Devon Acts ; and these accordingly are, by the General Act, carried on in their integrity to the new concern.

Batten : Accordingly, if the running powers were merely local under the South Devon Acts, they would remain so after the amalgamation. Clause 6, therefore, is not required, except, possibly, to prevent me from applying to the Railway Commissioners.

Mr. RICKARDS : Clause 6 seems to me pointed rather at special charges or regulations affecting particular portions of the traffic. This clause must be read with the incorporated sections of the General Act, and a meaning that will be consistent given to both enactments.

Pope : Clause 6 merely means that the Great Western will not make themselves liable for South Devon liabilities, except on the South Devon line itself.

Batten : If it is clear that I shall have against the amalgamated company the same rights which I now possess against the South Devon company, I will not prolong the discussion.

Locus standi Disallowed.

Agents for Petitioners, *Davis, Morgan & Co.*

Petition of (2) SHAREHOLDERS OF THE DARTMOUTH AND TORBAY RAILWAY COMPANY.

Railways—Amalgamation—Previous Amalgamation—Dispute, as to—Agreement—Lease—Arbitration—Award—Amalgamation, Depen-

dent upon—Validity of—Railways Clauses Act, 1863, Part V.

A bill for the amalgamation of the Great Western and South Devon railway companies was opposed by shareholders of the Dartmouth and Torbay company, included in one of the systems about to be fused, who alleged that legal proceedings were in contemplation, which would be defeated by the proposed amalgamation. The Dartmouth and Torbay railway had been leased in 1866 to the South Devon company, and before the expiration of the lease was amalgamated with the South Devon line by virtue of the award of an arbitrator made, as the petitioners alleged, irregularly and *ultra vires*, but this was denied :

Held, that unless the award was shown to be invalid, the Dartmouth and Torbay company must be taken to have been merged in the South Devon company, by whom accordingly the petitioners were represented.

The *locus standi* of the petitioners was objected to, because (1) their interests, if affected, were not distinguishable from the general body of shareholders, and they had no right to be heard on their behalf ; (2) the relations between the petitioners and the South Devon company were in no way affected by the bill ; (3) their legal rights, if any, would not be disturbed ; (4) no sufficient ground was shown.

Pembroke Stephens (for petitioners) : The signatures to the petition represent £15,000 out of a total capital of £36,000. In 1866, "heads for an agreement" between the Dartmouth and Torbay and South Devon companies were scheduled to an Act of that year, by which provision was made for an eventual amalgamation of those two companies, subject to the provisions of that Act, and of the agreement. By the latter the Dartmouth and Torbay line was to be leased to the South Devon company for ten years, and half-yearly accounts were to be rendered, and the 12th head of agreement was as follows :—"The Dartmouth company to be so soon as reasonably can be amalgamated with the South Devon company, on terms securing to the debenture holders and shareholders of the Dartmouth company benefits equivalent to those which they would have under the lease." No time was fixed either by the Act or agreement for the

amalgamation to take place; but we contend that it was not at any rate till the expiration of the ten years. Accounts were duly furnished for some time, but then ceased, and on investigation we learned with surprise that under an award of Lord Selborne (then Sir Roundell Palmer), dated the 14th August, 1871, or only five years after the Act of 1866, the Dartmouth company is stated to have been amalgamated with the South Devon company, on terms not at all as beneficial as those which the lease would have afforded. To this reference, or arbitration, we were no parties, and received no notice of it; we have indeed reason to believe that on the face of the award itself, or in an accompanying opinion, doubts were expressed by Sir R. Palmer whether this award was not *ultra vires* and capable of being set aside. In 1876, at the expiration of the ten years' term, notice was given to the South Devon company that legal proceedings would be taken for securing the legal rights of the shareholders; but by this bill the existence of the South Devon company will be terminated, and it will be impossible to try the legal question on its merits. We contend that the action of those who hurried on the arbitration was not *bona fide*, and that the true interests of the shareholders are opposed to, and to be distinguished from, the promotion of the present bill. As this is an amalgamation bill, the whole matter may legitimately be enquired into by the Committee.

Pope, Q.C. (for promoters): This case is met by the General Act, which preserves, as against the amalgamated company, all causes and rights of action or suit which accrued before the time of amalgamation, and were enforceable against the dissolved company.

Stephens: That will not help me, because I am not an outsider; I am, or am said to be, a part of the South Devon company itself, which is about to be fused.

Pope: You can only be South Devon, if you have been fused already. If, as you contend, Sir R. Palmer's award has not amalgamated you with the South Devon, there is nothing in the bill which affects you, for it only carries into the Great Western what is actually South Devon.

Stephens: In any event, my difficulties in raising the question will be seriously increased. It will be an amalgamation upon an amalgamation.

Mr. RICKARDS: Did the Dartmouth and Torbay Company submit to the arbitration before Sir R. Palmer, under their seal?

Pope: Arbitrators were appointed in the usual way, and Sir R. Palmer was the umpire. In 1871 he made his award, and the condition

on which the amalgamation was to take place was the execution of a deed of indemnity, which was accordingly executed on the 18th March, 1872, under the seal of the Dartmouth company.

Mr. RICKARDS: Unless it can be shown that the award is altogether invalid, the Dartmouth company was incorporated from that time with the South Devon company, and is now therefore represented by that company, who are joint promoters of the bill?

Stephens: The whole affair was kept secret. No report was issued by the directors of the Dartmouth company, and no meeting convened. The line having been leased for ten years, the shareholders were thrown off their guard. But when they began to make enquiries, and heard first of the award itself, and then of the doubt expressed by Sir R. Palmer, they determined to take action, and gave notice accordingly. Before anything practical can be done, however, this South Devon company itself comes to Parliament for amalgamation, and we seek to be heard to raise the question.

The *CHAIRMAN*: We need not trouble the promoters to reply. We think the petitioners have no *locus standi*.

Locus Standi Disallowed.

Agents for Petitioners, *Wyatt, Hoskins & Hooker.*

Agents for Bill, *Sherwood & Co.*

HOUNSLOW AND METROPOLITAN RAILWAY BILL.

Petition of LONDON AND SOUTH WESTERN RAILWAY COMPANY.

27th February, 1878.—(Before *Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.*)

Railways—Competition—Common Terminus—Running Powers—Same Traffic accommodated by means of.

A metropolitan railway company promoted a bill to effect a junction with a railway then in construction, starting from a town where the petitioning company already had a station. The proposed line did not run parallel to the petitioners' railway, or to a common terminus at the other end, but

both companies had running powers over other railways in the same district, and the petitioners contended that they were entitled to be heard against the bill on the ground of competition, as both railways would accommodate passengers travelling to the same parts of the metropolis, although not entirely over their own lines :

Held, that the competition thus created was a sufficient ground for a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no railway, stations, lands and property of theirs are taken or interfered with; (2) the proposed railway will be constructed from Hounslow to Ealing, joining the already authorised Ealing extension of the Metropolitan District railway, and between these points the railways of the petitioners in no way communicate; (3) the petitioners' railway, which runs from quite another part of Hounslow, terminates at their Waterloo station, and after crossing the Thames at Mortlake, runs entirely on the Surrey side of that river, whereas the proposed railway will run entirely on the Middlesex side, and there can be no competition between them; (4) the petition tends to show a ground of objection on the score of competition by other railways, but not by the petitioners; (5) the proposed railway will serve an entirely new district; (6) no ground for a hearing is alleged according to practice.

Clerk, Q.C. (for petitioners): We claim a *locus standi* on the ground of competition. The proposed line starts from Hounslow where we also have a station, and it joins the Metropolitan District system at Turnham Green, and from that point owing to running powers and traffic arrangements conferred upon and entered into by the promoters, passengers can be sent to various parts of the metropolis to which we can also carry passengers from Hounslow *via* Isleworth, Kew Bridge, and Gunnersbury, from which latter point we can send them to the north, the middle, the south, and the east of London. Although we do not run parallel with the proposed line to these various termini in London, the proposed line would never be more than a mile and a-half from our existing line, and owing to our respective running powers over other railways, we shall practically compete for passengers from the common source, namely, Hounslow. Not a single passenger from the district of Hounslow and Isleworth could be accommodated by this proposed line, that we could not accommodate by our existing line.

Mr. RICKARDS: Is your Hounslow station close to Hounslow?

Pope, Q.C. (for promoters): It is a mile and a-half between their terminus at Hounslow and our terminus there.

Clerk: But we say that this proposed line would take the traffic which we now accommodate.

Pope, Q.C. (in reply): In a crowded district near the metropolis, lines may be in immediate proximity with one another without their being said to be competitive. I contend that the decisions of the Referees on the cases in 1865 and 1866 govern this case, the circumstances being precisely similar, excepting that then the junction point was Acton, whereas now it is Turnham Green.

Clerk: The various arrangements entered into between the different suburban lines since that period have entirely altered the case.

The CHAIRMAN: The *locus standi* of the London and South Western Railway is *Allowed*.

Agents for Petitioners, *Bircham & Co.*

Agents for Bill, *Wyatt, Hoskins, & Hooker.*

KING'S CROSS AND CITY TRAMWAYS BILL.

Petition of (1) PETER MUMFORD AND OTHERS, BEING OWNERS, LESSEES, &C., AFFECTED BY THE BILL.

10th April, 1878.—(Before *Mr. PEMBERTON*, M.P., Chairman; *Mr. RICKARDS*, and *Mr. BONHAM CARTER*.)

Tramways—Frontagers—Owners and Occupiers—“Lessees,” how far affected—Frontagers not Landowners—S. O. 135—Interference with Premises—or Business—Individual Interests v. General—Depreciation of Property—Danger to Thoroughfares—Disturbance of ordinary Traffic—Railway following same Route—Striking out Parts of Petition—Limited locus having same effect—True meaning of S. O.—Special decision of the Court.

Against a bill for the construction of tramways, a number of persons along the route, who claimed to be “frontagers within the meaning of S. O. 135,” petitioned, raising objections on various grounds of injury personal to themselves, and also the usual grounds of opposition to tramways gene-

rally in the metropolis, including the fact that railway communication already existed between the proposed *termini* of the tramway. It was objected that S. O. 135, on which the petitioners relied, merely conferred a *locus standi* limited to "such allegations" of the petition as showed that the construction or use of the proposed tramway would injuriously affect the petitioners individually in the use or enjoyment of their premises, or in the conduct of their trade or business, and did not extend to any general considerations or objections connected with tramways:

Held, after much discussion, that the S. O. was to be read in the sense contended for, but that the petitioners were at liberty to show by any arguments, which were appropriate, how the proposed tramway would injuriously affect their interests. And the Court framed a special decision, following the words of the Standing Order.

(*Per. Cur.*) "The S. O. gives to a frontager a *locus*, which, it may be presumed, he had not before the S. O. was passed."

"The S. O. is not necessarily confined to an obstruction in front of his own house."

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs would be taken or used; (2) they described themselves as "frontagers within the meaning of S. O. 135," and hence were only entitled to be heard, if at all, in that capacity, and not further or otherwise, whilst such of them as were "lessees" were not covered by the S. O.; (3) the street authorities, who had petitioned, were the proper persons to complain of interference with thoroughfares; (4) no sufficient ground was shown.

Sir Mordaunt Wells (for petitioners): Such of my clients as are "lessees" are also occupiers, and have given their names and addresses. I rely on the decision in the *Tramways Provisional Order* case (1 Clifford & Rickards 118).

Pembroke Stephens (for the promoters): I accept the statement as to such of the petitioners as are lessees. But they all petition under one S. O., and should be restricted accordingly.

Mr. RICKARDS: I do not see how we can limit their *locus standi*?

The CHAIRMAN: The S. O. says they are to be heard on their allegations?

Stephens: They are only entitled to be heard upon particular allegations in their petition. Frontagers are not landowners who are entitled to a general *locus* (2 Clifford & Rickards, p. 56). The petitioners are entitled to be heard individually as to interference with their individual premises, but they have no right to be heard on the general question.

The CHAIRMAN: We can give them a *locus standi* in the words of the S. O.?

Stephens: If you will limit it first to those who come within the S. O., and next to such a *locus* as the S. O. gives, that is what I ask the Court to do.

Wells: I should be cramped with such a decision as that. Unless the frontagers—nearly all of whom are included in the petition—are allowed to go into the question generally, there will be no one to protect the public.

Stephens: The S. O. does not say that a frontager is to be heard generally, but on "such allegations," i.e., those relating to interference with his premises or business. All the questions as to general expediency of tramways, or to sufficiency of existing accommodation, and what may be called general questions, or matters of principle, outside the individual interests of the frontager himself, are excluded by the S. O.

Wells: For the frontager, as for the landowner, Parliament has interfered in an exceptional manner, and it could never have been intended, when the S. O. was made, that the frontager was to be tied down to showing that, as a greengrocer for instance, he would be injured by the stoppage of his particular cart. Parliament must have intended that the general question, and the balance of convenience and inconvenience, were to be gone into and considered.

Mr. RICKARDS: The S. O. gives to the frontager a *locus* which it may be presumed he had not before the S. O. was passed; and it authorises the Committee to hear him on certain specific allegations?

Wells: I submit that a frontager ought not to be limited in showing how the tramway will injuriously affect him in the use or enjoyment of his premises. A narrow part of the street, 100 yards away, might have the effect of obstructing or preventing carriages from coming up to his shop.

The CHAIRMAN: He would be entitled to show that. The S. O. is not necessarily confined to an obstruction in front of his own house. But it is another thing for him to discuss the expediency of tramways generally.

Wells: There is also the question of danger from a steep gradient or irregularities of the surface. How can such points be brought out,

except upon our opposition? The frontagers combine their several objections in one petition, and they say:—"The property in streets through which tramways are laid becomes depreciated in value, and the owners of shops, offices, and business premises in such streets would suffer great injury and loss, because traffic of all kinds, except that conveyed in tramway cars, avoids as far as possible the streets in which tramways are laid."

The CHAIRMAN: They would be entitled to raise that question.

Wells: Looking through the decisions, though there are many cases in which frontagers have been heard, I cannot find any where that their *locus* has been limited. We say again, "there is an existing railway along the course of the proposed tramways between King's Cross and the Farringdon Road, which gives every facility for the conveyance of passengers between those points, and renders unnecessary further accommodation."

Mr. RICKARDS: The additional inconvenience caused to you by the construction of the tramway is a matter on which you would be entitled to be heard.

Wells: If need be, I should be prepared to strike out certain parts of the petition.

Mr. RICKARDS: We cannot alter the petition, but we can limit the *locus* so that it will have the same effect as if you struck out certain paragraphs of the petition.

The CHAIRMAN: Our decision, following the words of the S. O., will be: "Petitioners to be heard in support of their allegations that the proposed tramways will injuriously affect them in the use or enjoyment of their premises, or in the conduct of their trade or business."

Stephens: Will the Court be pleased to add: "but not further or otherwise?"

The CHAIRMAN: We do not think it necessary to say that.

Agent for Petitioners, *H. Cruss*.

Petition of (2) THE GREAT NORTHERN RAILWAY COMPANY.

Practice—Tramway—Misdescription of—Verbal Error—May be Remedied.

A railway company petitioned as frontagers against the same bill, in respect of interference with their goods' warehouse, described as being in "Farringdon Street," and the objections denied that it was in-

tended to lay any tramway there. It clearly appeared, however, that this was a verbal error for "Farringdon Road," in which the tramways were to be laid down, and the Court over-ruled the objection.

(*Per Cur.*) "In the case of a purely verbal error, the Committee can allow the petition to be amended."

In this case, save as to a technical point, the same issues were raised as in (1) above reported. The petitioners were owners and occupiers of a goods' warehouse and premises fronting Farringdon Road, through which the tramways were proposed to be carried, but they had described this thoroughfare in their petition as Farringdon "Street." The promoters in their objections denied that any tramway was to be constructed in or through Farringdon Street, and urged that on their own showing, the petitioners had no ground for petitioning.

Pope, Q.C. (for petitioners): If this objection is allowed to prevail, we shall be carried back to the days of special pleading. The clerk who copied the allegation made a mistake as to the exact point where Farringdon Road began, and Farringdon Street ended: but we produce the deposited plans and the notice, which show how we shall be affected. As regards the extent of our opposition, we are quite willing that the decision given in the previous case shall govern our *locus* also.

Stephens (for promoters): The railway company in their petition complain of a particular injury, caused by a particular tramway, when in fact no such tramway is proposed by the bill. The explanation may very possibly be as suggested. But if the petition holds good here, why should it not do so equally in the case of a landowner who omits to say that his land is taken, or of a corporation who have not stated that their borough or town will be injuriously affected?

Mr. RICKARDS: In the same paragraph of the petition, the street is rightly described as "Farringdon Road," though when it is mentioned the second time it is called "street." Clearly, therefore, it is only a verbal error.

The CHAIRMAN: The Committee can allow the petition to be amended in that respect.

Locus standi Allowed, in the same terms as in the previous case.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *P. B. Sharkey*.

KINGSTON-UPON-HULL DOCKS BILL.

18th February, 1878.—(Before Mr. RAIKES, M.P., in the Chair; Mr. BRISTOWE, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Petition of (1) SIR FREDERICK A. T. CLIFFORD-CONSTABLE, BART.

Dock Bill—Embankment—Foreshore—Lord of the Seignior—Lord of the Manor—Rights of Wreck—Rights as a Landowner—Notice—Ex Abundante Cautelâ—Proof of Title—"Constable's Case," temp. Elizabeth—Board of Trade Returns—Grants by the Crown—Prior Grants—Saving Clause, as to—Tramways—Injurious to Market—How far Analogous.

Against a bill for the construction of a dock and embankment in the river Humber, the lord of a seignior and of manors lying on the north side of the river petitioned on the ground of interference with his foreshore. The promoters objected that he was not a landowner, that no manorial right, in the ordinary sense, was taken away, and generally denied his title. The petitioner, however, showed conclusively that he was entitled to "wreck" cast on the foreshore:

Held (without discussing the question of ownership of the foreshore) that the construction of the works would be such an interference with the right of wreck as entitled the petitioner to be heard.

The *locus standi* of Sir F. A. T. O. Constable was objected to, because (1) the portion of the foreshore claimed by the petitioner was vested, not in him, but in the Humber Conservancy Commissioners; (2) his rights as lord of the seignior of Holderness and of the manor of Burstwick were not such as entitled him to be heard against the preamble; (3) no sufficient ground was alleged in his petition.

Pembroke Stephens (for Sir Clifford Constable): The bill has for its object to sanction the construction of docks at a place called the Salt End of the Hay Marsh, three or four miles below Hull, and the embankment of the river Humber for the whole, or greater part, of the intervening space. These works will be executed, among other points, in the township and parishes of Preston and Marfleet; and both in the con-

struction of the works themselves, and in deepening and keeping open the entrance to the docks, powers of dredging, and otherwise interfering with the foreshore belonging to the petitioner, are indispensable, and will be exercised under the bill. Seignioral and other rights have been claimed and exercised from ancient date by the Constable family throughout this district.

Clerk, Q.O. (for the promoters): We say that you have no rights which are interfered with in the present day.

Stephens: The promoters themselves have given us notice in respect of the lands at Salt End, recognizing us as "Lord High Seignior of Holderness," and also in respect of land in the township of Marfleet as "Lord of the Manor of Marfleet."

Clerk: These notices were given *ex abundanti cautelâ*; but they do not estop us now from challenging your right as a landowner, and calling on you to prove your title.

Stephens: We also rely on an Act of 1773, which preserves our reversionary rights.

Clerk: None of the lands mentioned in that Act are taken by the bill: the question here is simply as to the foreshore.

Stephens: The promoters apparently will be satisfied with nothing less than absolute proof of title. I refer therefore to a case cited by Mr. Sergeant Merewether in his elaborate argument in the year 1824, for the Corporation of London against the Crown, which has been said to exhaust the learning upon this matter. It is known as "Sir Henry Constable's case," decided in 43 Eliz. (5th Rep. 106), and it has ever since been referred to as establishing that in his case, as in the case of his father, Sir John Constable, the sea-shore was to be taken as parcel of their manor. Sir H. Constable's case was heard in the reign of Queen Elizabeth. Coming now to the reign of Victoria, I produce copies of official documents forwarded annually from the Board of Trade in which they account from time to time to Sir Clifford Constable, as lord of the manor of Holderness and lord of the manor of Marfleet, for "wreck" cast upon the foreshore of his manor.

Clerk: By the Humber Conservancy Act, 1868, the foreshore of the Humber was granted by the Crown to the Conservators of the River Humber, who in their turn have entered into an agreement with the promoters, as to the execution of works on the foreshore.

Stephens: Yes, but the grant of the Crown was, as usual, subject to all prior grants, and the Act of 1868 contained a clause expressly preserving the rights of Sir Clifford Constable.

Clerk: Even supposing that the petitioner is

lord of the manor, and has certain rights of wreck, that does not give him any right to be heard as a landowner against this bill. As a matter of fact, since 1868, various Acts have been passed, all inconsistent with any supposed ownership of his in the foreshore.

The CHAIRMAN: Without going into the question of actual ownership or rights of property in the foreshore, are you prepared to meet the case of manorial right, as recognised in those accounts of wreckage issued from the Board of Trade?

Clerk: Those accounts are issued from year to year, just as wrecks may or may not happen on the particular points of the coast. I do not dispute that the lord of the seignior is entitled to wreckage when it is cast on shore, but in the nature of things that must happen rarely.

Mr. RICKARDS: Might not that right be affected by the construction of works covering the foreshore?

Clerk: Possibly. But then comes the larger question—does the possession of manorial rights, even though coupled with a right of wreckage, confer a *locus standi* against a bill like this? The Examiner would not even require notice to be served on a lord of the manor, and though as a matter of precaution we did it here, I still contend that no manorial rights, properly speaking, are interfered with by us.

Mr. RICKARDS: Have we had any case before us where the possession of manorial rights gave a *locus standi* against a bill?

Stephens: There was the case of Sir E. Colebrooke (*North Metropolitan Tramways Bill*, 1870, 2 Clifford & Stephens 89).

Clerk: That was a case in which, Sir E. Colebrooke being lord of the manor, it was alleged that the construction of the tramways would interfere with the size of the streets and compel the hay-market in Whitechapel to go elsewhere.

Mr. RICKARDS: Is not this principle much the same? May not the effect of this bill be, by enclosing and occupying the foreshore, which has hitherto been subject to this right of wreckage, to prejudice the rights and interests of the petitioner?

Clerk: There will be an interference with his rights, possibly to that limited extent, but hardly with any property.

Mr. RICKARDS: I find in *Smethurst* (p. 22) this statement: "We may mention shortly various classes of persons, who, though not landowners, have a right to be heard in that character, or who, being landowners, are also heard, though no part of their land is proposed to be taken for, or injuriously affected by, proposed works. Thus, a lord of a manor against a bill which would affect his manorial rights."

Clerk: The case there referred to was that of Mr. Cartwright, lord of the manor of Llandaff.

Stephens: In respect of interference with a mud-bank, lying between high and low water-mark, and belonging to him as lord of the manor.

The CHAIRMAN: If it is conceded that the petitioner has this right of wreckage, and that it will be interfered with, his *locus standi* is allowed.

Locus standi Allowed.

Agent for petitioner, G. Norton.

Petition of (2) CORPORATION OF HULL

[Very long and special objections were taken to the *locus standi* of the Corporation of Hull, on the ground mainly that the proposed works were outside the borough and consequently beyond their jurisdiction. And the case had been partly argued on that footing, when it was discovered that a house, forming part of the corporate property, had been scheduled and was proposed to be taken, whereupon the *locus standi* of the corporation, as landowners, against the whole bill, became absolute.]

Petition of (3) THOMAS SPURR

Embankment—Riparian Owner—Land covered by flow of the tide—Groyne—Apprehended Injury from Silting—Prima facie Engineering Case—Right of Pre-emption.

A landowner petitioned against an embankment bill on the ground that, owing to a projecting groyne, a deposit of mud and silt on his land might be caused, and he asked the Court to declare that he had raised a *prima facie* engineering case:

Held, that he was entitled to be heard against the apprehended disturbance, though its effect might be to increase his own land.

The *locus standi* of Thomas Spurr was objected to, because (1) no land, &c., of his was taken; (2) his right of pre-emption was not interfered with; (3 and 4) he had no right or jurisdiction entitling him to complain of the diversion of a

foothpath, of casting mud into the river, &c.; (5) no sufficient ground was shown according to practice.

Pope, Q.C.: Mr. Spurr is the owner of a piece of freehold land, nine acres in extent, forming part of the northern shore of the river Humber, lying between high and low-water mark, and covered with water at ordinary tides. This is situate near the boundary of the company's proposed works, which are to extend into this river for 630 yards, and the result will be to intercept the flow and reflow of the tide, and cause a deposit of silt or mud, injuring his foreshore and destroying his present means of communication with the river.

Mr. RICKARDS: What injurious effect will this silting have upon the land?

Pope: It is an engineering question; but the allegation is that the land will be within the area where the water will be rendered quiescent by the construction of the works, and a deposit of mud and silt will accordingly take place.

Mr. BRISTOWE: The effect may be to advance the line of your frontage into the river?

Pope: That may be one result, but it should not be advanced against our consent. It is conceivable that a high bank may be formed by this silting-up, and if we wanted to sell the land to some public body its value might be reduced by the necessity of removing this bank in the first instance. I would merely point out that engineering questions may arise; but I am not prepared to discuss them at present.

Mr. BRISTOWE: What you ask us to declare is, that there is a *prima facie* engineering case in your favour?

Pope: Yes; leaving the Committee hereafter to decide how far it is deserving attention or relief.

Clerk, Q.C. (for promoters): Mr. Spurr has, it is true, a thin strip of land along the bank of the river, but it is half a mile away from the proposed groyne of the company. If affected at all, it must be advantageously, for the value of his foreshore will be increased; and he will have a right of pre-emption as regards any land added to the foreshore.

Pope: No: for these will not be works executed under the Act of 1876, by which the right of pre-emption was given.

Locus standi Allowed.

Agents for Petitioners, Durnford & Co.

Petition of (4) HENRY BRIGG AND OTHERS.

Dock Bill—Conservancy Board—Minority of—
Alleged Illegal Acts of Majority—Remedy for.

Where a conservancy board had refused to petition against a dock bill, and the dissentient minority of the board alleged that the action of the majority was illegal, persons who were interested pecuniarily in the question having taken part in the voting:

Held, that an appeal to the legal tribunals, and not to Parliament, was the true remedy of the petitioners.

The *locus standi* of Henry Brigg and others was objected to, because (1) as individual members of the Humber conservancy commissioners they were not entitled to be heard, that body itself not having petitioned; (2) the protection of navigation, or of the interests of trade or commerce, was not within the province of the petitioners; (3) no land, &c., of theirs was taken; (4) the criticisms of the acts of the dock commissioners in the petition were irrelevant; (5) there was no ground for a hearing according to practice.

Pope, Q.C. (for Brigg and others): The petitioners are the minority of the Humber conservancy board, and they complain that the vote of their own body in entering into this arrangement with the promoters was illegal, inasmuch as persons who were pecuniarily interested in the question voted and helped to carry the resolution.

The CHAIRMAN: A court of law is the remedy for that.

Pope: I am afraid that is the real answer to this application to Parliament. They may, however, be taken as representing the class of shipowners on the question generally.

Mr. RICKARDS: The petition does not seem to take up the case of the shipowners.

Clerk, Q.C. (for promoters) was not called upon.

The CHAIRMAN: The *locus standi* of Henry Brigg and others is *Disallowed*.

Agents for Petitioners, Durnford & Co.

Agents for Bill, Dyson & Co.

LANCASHIRE AND YORKSHIRE RAILWAY BILL.

Petition of MANUFACTURERS AND COTTONSPINNERS, &c., IN BACUP.

27th March, 1878.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railway—Extension of Time for Constructing—Traders and Manufacturers, complaining of—Delay in Obtaining Railway Accommodation—Absence of Specific Injury.

A number of traders and manufacturers, who were admitted by the promoters to represent the trade interests of the district, opposed a bill authorising the extension of time for constructing a railway. They urged that no further delay should be permitted by Parliament, inasmuch as the time for the completion of the railway in question had already been extended, and they had thus been kept without railway accommodation for a number of years, and prevented from obtaining it from other railway companies:

Held, that they sustained no such special injury apart from the general public as entitled them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) the petition complains of delay in the construction of a branch railway to Bacup, but it raises no issue upon the bill, and is too vague to afford a *locus standi*; (3) even if the petition were sufficiently specific and distinct the petitioners have no right to be heard against an extension of time; nor as manufacturers and traders have they any vested interest in the execution by a railway company of powers conferred on that company, and they do not allege that their land or property will be taken or injuriously affected; (4) they allege no ground for a hearing according to practice.

Pember, Q.C. (for petitioners): This is a flagrant case of neglect on the part of the promoters to fulfil their obligations in constructing a short branch line of only three miles, originally authorised in 1872, and the time for making which was extended by Parliament in 1876. The district is very badly served as regards railways and we are the principal sufferers, as it is admitted we represent the traders of the district. By obtaining their original powers in 1872, the promoters have prevented us from getting accommodation elsewhere.

Mr. RICKARDS: Can you refer us to any case where traders have been heard against an extension of time bill?

Pember: No. But in the *Musselburgh and Dalkeith Water Bill* (1 Clifford & Rickards 106), the Edinburgh water trustees, who were not owners, were allowed a *locus standi*.

Pope, Q.C. (for promoters): The petitioners there had a competing scheme. These traders have no other interest in the completion of the railway within the authorised period than pertains to the general public. They have no peculiar interest which is specifically injured.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *H. L. Cripps*.

LOCAL GOVERNMENT BOARD PROVISIONAL ORDER (DARENTH VALLEY) CONFIRMATION BILL.

Petition of (1) OWNERS OF PROPERTY IN THE DISTRICT OF THE DARTFORD RURAL SANITARY AUTHORITY; (2) JOHN THORNTON ROGERS AND OTHERS.

May 30th, 1878.—(Before *Mr. BRISTOWE*, M.P., Chairman; *Sir JOHN DUCKWORTH*; *Mr. RICKARDS*, and *Mr. BONHAM-CARTER*.)

Main Sewerage Scheme—Provisional Order for carrying out—Public Health Act, 1875, ss. 277-9—Rural Sanitary Authorities, Promoting and Opposing—Joint District for Drainage Purposes—Contribution to Expenses of—Owners Liable to New Rates for Sewerage—And Subject to New Rating Authority—Special Drainage District—Owners, Representation of, by Rural Sanitary Authorities—Vote in election of.

A Provisional Order was promoted by urban and rural sanitary authorities, under the provisions of the Public Health Act, 1875, with a view to construct a main sewer, and constitute a joint district for that purpose, the cost of construction and expenses of management being contributed by a joint board, composed of representatives from the several local authorities whose districts would be served by the sewer, and who would be empowered to impose rates. Petitions were presented (1) by owners in a district in which the rural sanitary authority (whose *locus standi* was not objected to) also opposed the scheme, and (2) by owners in another district where the local authority approved and were promoting the Order. Both petitioners complained that their property would be de-

preciated in value in consequence of the new rates, and that they would derive no benefit from the proposed outlay :

Held, that as, under the Provisional Order, owners in the several contributing districts would be subjected to a new rating authority and new rates, both sets of petitioners were entitled to a *locus standi*, and were not for this purpose represented by their respective local authorities.

The Provisional Order was promoted, among other bodies, by the local board of Sevenoaks and the board of guardians of the Sevenoaks union. It proposed under the provisions of the Public Health Act, 1875, to construct a main sewer from Westerham to join the West Kent main sewerage works at Dartford for the use of the intervening districts, which were made contributaries; and a joint board was proposed to be constituted with rating powers, the expenses incurred in carrying out the duties prescribed by the Order being defrayed out of a common fund, to be contributed by the several urban and rural sanitary districts specified in the Order, in proportion to the rateable value of the property in each such district. The Order was opposed, among others, by the guardians of the Dartford union, whose *locus standi* was admitted. The petitioners also opposed it on the ground that their property would be depreciated by the new rates to which it would be subjected, that they would be placed under a new rating authority, and would derive no benefit from the proposed expenditure.

The *locus standi* of owners, &c., (1) was objected to, because (1) the guardians of the poor of the Dartford union, acting as the rural sanitary authority of the district, have petitioned against the confirmation of the Order, and their *locus standi* is not objected to, and the owners, &c., being represented by such rural sanitary authority, are not entitled to be heard on their separate petition; (2) the petitioners do not represent the general body of owners, &c., in the district; (3) their petition contains no allegations entitling them to be heard according to practice.

The *locus standi* of (2) J. T. Rogers and others was objected to, because (1) the Sevenoaks rural sanitary authority, within whose district the properties of the petitioners lie, are, with the Sevenoaks local board, joint promoters of the Provisional Order, and the petitioners cannot be heard against the bodies by whom they are represented; (2 and 3) they do not repre-

sent the general body of owners in the district, and make no allegations entitling them to be heard according to practice.

Shiress Will (for (2) J. T. Rogers and others) : The object of this scheme is to carry into effect a system of sewerage for the district situated in the Darenth Valley. The whole benefit of the scheme must be confined to the water-shed of that Valley. It cannot, in the nature of things, be extended beyond those limits, which are clear and definite, particularly towards the south where the Valley is bounded by a high and unbroken ridge of country. From their position the petitioners' lands cannot possibly benefit from the proposed expenditure, yet, should the Order be confirmed by Parliament in its present state, we shall be subject to a new rating authority and a new rate, unlimited in amount, for the benefit of others. Under section 277 in the Public Health Act, 1875, provision is made for the formation of special drainage districts. In fairness to the petitioners the course pointed out by this section should have been followed, and a special drainage district should have been formed excluding our lands. At all events, the Provisional Order should only be sanctioned on condition that our lands are excluded from its operation. The case is concluded by the authority of the following cases:—*West Kent Drainage* (1 Clifford & Rickards 195); *Cardiff* (2 Clifford & Stephens 154); *Chesterfield* (1 Clifford & Rickards 212); *Newcastle-under-Lyme* (2 Clifford & Rickards 47). This is even a stronger case, for here there is to be a combination of other local authorities with our own.

Bell (for (1) owners, &c., in Dartford) : The only distinction between our case and that of the other petitioners is that, in Sevenoaks, the rural sanitary authority are promoting the Order, whereas in Dartford the rural sanitary authority, one of the bodies proposed to be united, are opposing it. We allege that new obligations will be imposed upon us, and the value of our property depreciated without conferring upon us any commensurate benefit, or in some instances without any benefit whatever. I pray in aid Mr. Will's argument, and rely upon the same cases.

Littler, Q.C. (for promoters) : The petitioners are not, as in the *Newcastle-Under-Lyme* case, to be transferred from a rural to an urban authority, but their district is to be united with others for certain objects, the carrying out of which are clearly within the power of the promoters, so far as the Sevenoaks district is concerned. It happens that the two local authorities at Dartford object to the Provisional Order, but if all the local authorities concerned had agreed, they could have arranged to execute

these works without objection on the part of anybody.

Mr. RICKARDS: It is alleged in the petition that the petitioners would be subjected to a new rating authority and a new rate. Does this Provisional Order constitute a new rating authority and a new rate?

Little: It does not constitute a new rating authority, because the joint board have to form a common fund, and the petitioners would still be rated by their own authority for the proportion required for the expenses of the joint board. It is not a new rate. It may be said to be a new authority, because it will be an authority of which each of these local authorities will be only a part.

The CHAIRMAN: Is it not a new rate?

Little: Under the Public Health Act each authority might agree with every other authority to carry out a united scheme, each authority paying for its own district. Instead of that they join together to contribute jointly to the whole expense. The cases cited do not apply to the petition of owners in the district of the Dartford rural sanitary authority; the petitioners there will be represented before the Committee by their local authority, who oppose the Order, and whose interests are identical with theirs.

Mr. RICKARDS: The rural sanitary authority do not say that a new burden will be imposed upon owners.

Little: No; but they represent the interests both of owners and ratepayers, for in a rural sanitary district owners as well as occupiers have votes, which is not the case within a borough. This is not like a proposal to transfer owners from a rural district to a borough, in which case there would be a new incidence of taxation.

The COURT (after deliberation): The *locus standi* of both sets of Petitioners is *Allowed*.

Agent for Petitioners (1), *Bell*.

Agent for Petitioners (2), *Loch*.

Agent for Bill, *Norton*.

LOCAL GOVERNMENT BOARD PROVISIONAL ORDER (DAWLISH) CONFIRMATION BILL.

Petition of JOHN TAPLEY HARVEY AND WILLIAM HARVEY.

30th May, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Provisional Order—Local and Sanitary Authority—Powers for Compulsory Purchase of Lands to be used for Purposes of Water Supply—Owners of Waterworks Opposing Bill for—Lands Clauses Consolidation Acts—Public Health Act, 1875—Competition in Supply of Water—Ratepayers—Rating Powers under Public Health Act—Building Estate—Deterioration in Value of Property by New Rates—Protective Clauses—Res inter alios acta.

A local sanitary authority sought the confirmation of a Provisional Order, enabling them to put into operation the powers of the Lands Clauses Consolidation Acts for the compulsory purchase of lands to be used for the purpose of constructing storage and service reservoirs, with a view to supply their own district with water. This supply they were empowered to provide and to levy the necessary rates for under the Public Health Act. The petitioners were themselves owners of waterworks and supplied their own villas on a building estate in the promoters' district. They complained that they would be injured by competition with the promoters, that the money they had expended on their waterworks would be wasted, that their tenants would have to contribute to the general rate levied throughout the district, and that this would have the effect of deteriorating the value of their property:

Held, that, inasmuch as the Order sought to be confirmed was merely one for enabling the promoters to put in force the provisions of the Lands Clauses Consolidation Acts for the compulsory acquisition of lands, and the promoters derived no powers under it for the supply of water, the petitioners were not entitled to a *locus standi* on any of the above grounds.

The *locus standi* of the petitioners was objected to, because (1) no powers are sought to take or interfere with their land or property; (2) the only power sought is to put in force the powers of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, with respect to the purchase and taking of lands (otherwise than by agreement) described in the schedule to the Order, and the petitioners do not claim to be in-

terested in those lands; (3) they appear to suggest that there should be provisions inserted in the bill or Order, usually inserted in Acts of Parliament, authorising the construction of waterworks, and provisions exempting the petitioners from liability to certain rates; but neither the bill nor Order confer upon the promoters any powers to construct waterworks or levy rates; (4) their petition discloses no ground for a hearing according to practice.

Little, Q.C. (for petitioners): The Order authorises the promoters, who are the sanitary authority for the urban district of Dawlish, to take lands compulsorily for the construction of storage and service reservoirs in connection with their proposed works of water-supply for their district. They can then, under the Public Health Act, levy rates for that purpose. We are owners of a reservoir and waterworks in this district, and we already supply a number of villas erected on a building estate belonging to us. The promoters would be empowered under the Public Health Act to rate us or our tenants for water whether we got any benefit from the supply or not, and this general and indiscriminate rating was an evil specially pointed out by the Select Committee on the Public Health Act. We therefore claim to be heard first on the ground that it would be a great hardship upon us when we have gone to the expense of supplying water to our own property to be deprived of the outlay we have made by the action of the local board, who will become our competitors under this Order; secondly, it would be a great hardship upon our tenants, who are already supplied with water by us, that they should be taxed by the local board for it; and, lastly, we complain that our property will be diminished in value by this tax. We therefore ask for clauses to protect our property and flow of water from injury, and from the operation of any general rate for the purchase of lands and maintenance of works, and to render it compulsory on the local authority to distinguish in their accounts all expenditure connected with the acquisition of lands.

Mr. RICKARDS: You do not object to the acquisition of lands, which is all that the Order authorises?

Little: Not under certain conditions. But if they get the lands they will make the works, and rate us for them. The case of *St. Helen's Water Bill* (1 Clifford & Stephens 14), is on all fours with this.

Mr. RICKARDS: This is not a water bill at all. The enacting part declares that "the local government board authorises the promoters to put in force the Lands Clauses Acts, with respect to the

taking of lands." Is not that compulsory taking *res inter alios acta*?

Little: But the land is specially described as being required for water purposes.

Mr. RICKARDS: If the owners of the land had consented to part with it, you would have been nowhere. With regard to rating, the powers for that are given by the Public Health Act.

Little: As to the rating question, I refer to the *Newcastle-under-Lyme Borough, &c., Bill* (2 Clifford & Rickards 47).

Cripps, Parliamentary Agent (for promoters): All we are asking for is that the local government board may provide us with the machinery for valuing the land as between ourselves and the owner. Without the Order we could purchase the land, but it would be at the owner's price, and we should have to levy a correspondingly heavy rate. The bill merely deals with the compulsory acquisition of the land under the Lands Clauses Consolidation Acts, which provide proper machinery for assessing its value. It is not a water bill, and petitioners do not object to the mere acquisition of the land, which is the whole object of the bill.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, *Batten*.

Agents for Bill, *Dyson & Co.*

LOCAL GOVERNMENT BOARD PROVISIONAL ORDER (HUCKNALL TORKARD) CONFIRMATION BILL.

Petition of (1) OWNERS, OCCUPIERS, AND INHABITANTS OF HUCKNALL TORKARD.

30th May, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Provisional Order—Compulsory taking of Lands—Water Supply—Local Board—Owners, &c.—Representation—Municipal Corporations v. Local Boards—Public Health Act, 1875—Rating Powers—Burdens on Property—Insufficiency of Allegations as to—Alternative Supply from Water Company suggested.

A petition against a Provisional Order for the compulsory taking of lands by a local board with a view to a water supply was signed by 111 out of 9,000 owners, occupiers, and inhabitants of the district. It was admitted that most of the petitioners were repre-

sented by the local board. But a *locus* was claimed for the owners who signed, in addition to the landowner immediately affected by the Order, whose separate petition had not been objected to. The promoters contended that a distinction was to be drawn between owners in a borough who had no voice in electing the corporation, and owners in a sanitary district to whom votes in the election of members of the local board were expressly given by the Public Health Act, 1875, sec. 8; and the promoters further objected that the allegations of injury in the petition were not specific:

Held (apparently upon the latter ground), that the petitioners were not entitled to be heard.

The *locus standi* of the owners, &c., was objected to, because (1) they were represented by the local board; (2) the petition was not approved of at any meeting; (3) it only contained 111 signatures, the total number of inhabitants being 9,000; (4) the petition did not disclose how or to what extent the petitioners, or any of them, were injuriously affected; (5) the question raised as to minerals affected other petitioners whose right to be heard was admitted; (6) the question of alternative supply from the water-works company had been already decided by Parliament.

Michael, Q.C. (for petitioners): I acknowledge that some of the 111 who have signed the petition are shut out from appearing by our rules; but the owners of property, who will be affected by the works which the sanitary authority proposes to undertake, and who will have to bear the expense, ought to be heard. Moreover, once the sanitary authority is in possession of this water supply they can force its introduction into houses whether the owners ask for it or not. A large sum of money must necessarily be expended in acquiring land, sinking wells, and supplying the district, and all this outlay must be met out of the general district rate, which subjects the land to taxation, and makes the owner's interest less valuable. In all such cases owners have a right to appear and oppose the action of the local authority. And it is not necessary that a meeting should have been called. (*St. Helen's Borough Improvement*, 1 Clifford & Stephens 52; *Pontefract Borough Extension*, 1 Clifford & Rickards 183; *Huddersfield Water and Improvement*, *Ib.* 229.)

Pembroke Stephens: All the cases cited were

those of municipal corporations, whilst this is a local board.

Mr. Rickards: They are all corporations now by the Public Health Act. Do you mean to distinguish municipal corporations from other corporations?

Stephens: Yes.

Michael: What can be the difference between them? A local board is a corporation for every practical purpose. I rely also on the *West Kent Drainage Bill* (1 Clifford & Rickards 196); the *Hove Improvement Bill*, (*Ib.* 30); and the *Newcastle-under-Lyme Burgh Extension and Improvement Bill* (2 Clifford & Rickards 47). In some of those cases very few owners signed, and yet they were admitted.

The *CHAIRMAN*: Would owners, in a case of this kind, have any representation on the local board?

Michael: They have a power of voting under *Sturges's Bourne's Act*. They cannot be said to be represented on the local board, but they have the power of voting for their property, irrespective of the voting of the occupier, and notwithstanding that the occupier may have already voted. It is not representation in the ordinary sense of the word.

Stephens (for promoters): The petitioners have no right to be heard, and even if they had no injury is alleged in their petition. This is a Provisional Order simply for putting in force the compulsory powers of the *Lands Clauses Act*, as to which we shall have to meet the opposition of the landowner himself; but how the owners of other lands are interested in the question does not appear, for there is nothing whatever about rating in the present application to Parliament. On the question of representation, if the Court adheres to its ordinary practice, the principle is clear. In municipal boroughs you exclude the ratepayers and burgesses, because they take part in the election of the body that administers their local affairs, and you admit the owners for the opposite reason. In local board districts the owner as well as the occupier votes for the governing body, and if he happen to be the occupier as well as owner, he possesses a vote in each capacity. (*Public Health Act, 1875, Schedule 2, Art. 13.*) The moment you find that an owner has become part of a constituency electing representatives, that moment he is in a different position from an owner in a borough, and the principle which has governed the decided cases as to municipal corporations fails you. The *West Kent* case certainly was not that of a municipal corporation, but there an entirely new body was about to be created and new burdens imposed upon the owners.

The CHAIRMAN: I do not see in this petition any allegation that a new charge is about to be imposed on the petitioners as owners?

Michael: The last paragraph says:—"Your petitioners submit that the financial question of water supply is one more for the consideration of owners of property than for the occupiers of houses, as upon the owners the cost of such supply must ultimately fall."

Mr. RICKARDS: But the paragraph continues:—"and the owners of nine-tenths of the land and about two-thirds of the houses in the parish did present a memorial to the Nottingham water works company requesting them to undertake the supply of Hucknall Torkard on the ground of economy and expedition." The way that paragraph is put implies that the opinion of the owners of property as to how a supply of water should be furnished, is entitled to most weight, and that they prefer to be supplied by the Nottingham company?

Michael: The petition may not be artistically worded, but what meaning can it have, save that the local board are going to spend more money than is necessary; that the expense will fall upon the petitioners' property, and thereby the petitioners will be injuriously affected.

Mr. RICKARDS: The gist of the petition seems to be that the petitioners think it would be a much better thing if the waterworks company gave the supply. If I could see anything in the petition about expense falling on their own properties as owners, it would make a great difference.

Michael: From the petition as a whole the inference may be fairly gathered that the works will be unnecessarily costly, that we object to them, and that we point out an alternative mode by which this large outlay may be avoided.

Stephens (in reply): The petitioners must point to something in the bill that affects them. The rating powers are not in the bill, but in the General Act of 1875, where they will remain, whether this Order passes or not. All that the bill deals with is the power to take particular lands at a particular place; and the other powers, whether of digging, of pumping, of distributing the water when obtained, of carrying it into the houses, or ultimately of rating, are all in the Public Health Act, 1875. As to the decisions cited, the assumption that owners are heard in all cases is too wide. The decision in the *Chesterfield Borough Improvement* case (1 Clifford & Rickards 212) shows that it is only when owners are not represented by some body or other that they are entitled to be heard. Here the owners are distinctly represented. And even if they were not, the *Kingstown Township Bill* (1 Clifford & Rickards 38) shows that

owners must allege a sufficiently specific injury on which a *locus standi* can be founded.

The COURT (after deliberation): The *locus standi* of Owners, Occupiers, and Inhabitants of Hucknall Torkard is *Disallowed*.

Agents for Petitioners, *Dyson & Co.*

Petition of (2) NOTTINGHAM WATERWORKS COMPANY.

Provisional Order—Taking of Lands—Underground Water—Pumping Station—Rival Water Company—Rights of, over Lands proposed to be taken—Conflicting Schemes—Agreement with Landowner—Duplicate Petitions—Distinct Interests.

When a local board sought power to take compulsorily from a landowner a plot of ground for the erection of a pumping station, and a waterworks company, as the grantees of the landowner, claimed the right, in a certain contingency, of establishing their works upon the same site:

Held, that the waterworks company were entitled to be heard, although the landowner had also petitioned, and his *locus* was conceded, and although, in each case, the works were proposed with a view of obtaining a supply of water from subterranean sources.

The *locus standi* of the company was objected to, because (1) no lands of theirs were taken; (2) the lands proposed to be acquired under the Order were not those over which the petitioners had any right; (3) any interest in lands which might have been acquired by the petitioners was not such as to entitle them to be heard against the bill; (4) they were merely rights of acquiring underground water, which, according to practice did not confer a *locus standi*; (5) no sufficient ground was shown.

Pope, Q.C. (for petitioners): The promoters propose to take compulsorily an acre of land on Mr. Montagu's estate, who has already granted to us in perpetuity the right to go upon all or any part of his property to bore for water, in the place which we may find most suitable, and there to erect a pumping station and works for carrying out our undertaking as a water company. The land over which the promoters seek powers forms part of the property over which these

rights have been conceded to us; and therefore the effect of the bill is to take out of the scope of an agreement with Mr. Montagu so much of the land as they may acquire. Their only answer is that the water is underground water. But I have also surface rights extending over the whole estate. True, I am limited in the first instance to a particular plot of six acres which they do not touch; but if these should prove insufficient in yield, or otherwise unsatisfactory, I may select any other six acres, and I may then find that the best of the six has been already occupied by the promoters. The grantor has bound himself not at any time to make any grant to any other person, corporation, public authority, or company, of the rights or powers he has granted to us. So that we have not only a roving right, but an exclusive roving right which will be interfered with by the bill.

Mr. RICKARDS: Does the owner of the estate petition?

Pembroke Stephens (for promoters): He does, and his *locus standi* is not disputed.

Pope: But the answer to him would be that he had granted away his rights, and that the Nottingham company were the proper persons to appear.

Stephens (in reply): This is a case for the exercise of the discretion of the Court. Here are two petitions as to the same subject-matter, and both sets of petitioners seek to be heard.

Mr. RICKARDS: But the rights are distinct. The petitioners claim as grantees of Mr. Montagu?

Stephens: They claim in right merely of an agreement between themselves and Mr. Montagu. If he is admitted he can say everything in support of the agreement, and their only object can be to say it twice over.

The CHAIRMAN: The company want to defend the easement which they have acquired. That is something distinct from the position of Mr. Montagu.

Stephens: In any event, the agreement relates only to underground water, and that you have frequently decided is a question not to be gone into here.

The CHAIRMAN: Having heard the agreement read, do you think you can contest the point that you are, or may be, interfering with surface rights?

Stephens: They themselves have selected the first six acres, which we do not touch, and it is only in the event of these not coming up to their expectations that any difficulty can arise. Nothing whatever has yet been done under the agreement; and the *Atherton* case (1 Clifford & Stephens 112) is an authority showing that where the whole thing is prospective, and

arrangements merely as to the future have been entered into, a *locus* is withheld.

The CHAIRMAN: The *locus standi* of the Nottingham Waterworks Company is Allowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Sherwood & Co.*

LOCAL GOVERNMENT BOARD PROVISIONAL ORDER (ILKESTON) CONFIRMATION BILL.

Petition of STANTON IRON WORKS CO. (LIMITED).

30th May, 1878.—(Before Mr. BRISTOWE, M.P., in the Chair; Sir J. DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Provisional Order—Urban Sanitary Authority—Compulsory Purchase of Land by—Disposal of Sewage, Land bought for—Cost of Works—Alternative Scheme—Owners complaining of New Rates—Property, depreciation in value of, by Sewage Works—Nuisance from Sewage—Public Health Act, 1875—Lands Clauses Consolidation Act.

An urban sanitary authority promoted a Provisional Order enabling them under the authority of the Public Health Act to put in force the provisions of the Lands Clauses Acts for the compulsory purchase of lands, and they proposed to use these lands for the disposal of the sewage of the district. The Provisional Order was opposed by an ironworks company, the owners of extensive cottage and other property within the district, who complained that their property would be depreciated in value by the neighbourhood of the proposed sewage works, and also by its liability to new rates rendered necessary by the outlay upon these works. The Provisional Order contained no reference to new rates, the powers necessary in this respect for the completion of the new works being conferred upon the promoters by the General Act:

Held, that under these circumstances the petitioners had no *locus standi*.

This was a Provisional Order relating to the local government district of Ilkeston, and empowered the Ilkeston local board, who promoted the Order, and were the sanitary authority for the urban sanitary district of Ilkeston, in Derbyshire, to purchase and take, otherwise than by agreement, the lands described in the schedule to the Order, for the purpose of disposing of the sewage of their district, putting in force for such purchase the powers of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869. These lands were numbered in the deposited plan which was referred to in the schedule.

The *locus standi* of the petitioners was objected to, because (1 and 2) the only object of the Provisional Order is to enable the promoters to obtain the lands specified, and the petitioners are not owners, &c., of any of the said lands; (3, 4, and 5) the allegations in the petition are not such as, according to practice, can be raised by the petitioners; the Order contains no provision affecting them; and they have no interests entitling them to be heard.

Cooper, Parliamentary Agent (for petitioners): The deposited plan shows a long line of intercepting sewer passing through the whole of Ilkeston, and terminating on the scheduled lands. We are large owners of property in Ilkeston, including 90 cottages inhabited by our work-people, and situated within the district of the promoters; and we also own and occupy iron-works. The sewage lands will only be separated from our cottages by a narrow road. We desire to be heard both as ratepayers and as owners whose property will be subjected to increased burdens if the Order be confirmed; and we say that the expenses of this scheme will be greatly in excess of the cost of a suitable and well-considered plan of sewage for the district. Our case is similar to that of the *Hucknall Torkard* petitioners (*ante*, 116-17), and I pray in aid the arguments used and authorities cited by Mr. Michael in that case.

Mr. RICKARDS: The petitioners do not point to any special financial burdens which the Provisional Order will impose on them as owners.

Cooper: It is true that the Order confers no additional rating powers, but the promoters would possess, for the purpose of carrying out this sewage scheme, the powers given them by the Public Health Act.

Mr. RICKARDS: Will it be competent for the Committee, upon a bill which is simply for the compulsory purchase of lands, to enter upon questions of rating, or questions of an alternative scheme, and relieve you as owners of the financial burden which, as you say, the scheme will impose on you?

Cooper: We might point to the plans and submit to the Committee the demerits of the scheme and its cost, and the financial burden we should have to bear through the taking of these lands.

Rees, Parliamentary Agent (for promoters): Irrespective of any powers under the Provisional Order, the sanitary authority may construct works and purchase land for the purpose of dealing with sewage; and the only object of the Order is to enable us to get rid of technical difficulties in acquiring the land by agreement, and to take it by compulsion. This being so, the only persons entitled to appear are those directly interested in the land. The case of the *Salford Borough Drainage and Improvement Bill* (2 Clifford and Stephens, 132) is directly in point. I also pray in aid the arguments of Mr. Pembroke Stephens (*ante*, 117).

The COURT (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, Cooper.

Agent for Bill, Rees.

LONDON AND NORTH-WESTERN RAILWAY (RAILWAYS AND WIDENINGS) BILL.

Petition of SAMUEL DEWHURST AND COMPANY.

11th March, 1878.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Mr. BRISTOWE, M.P., and Mr. RICKARDS.)

Railway—Widening of—Public Road stopped up—Traders complaining of—Business premises—Access obstructed—Depreciation in value of premises through—Substantial injury to trade.

A railway company sought Parliamentary powers, *inter alia*, to stop up a public road, which formed the principal means of access to the business premises of the petitioners, who claimed to be heard on the ground of the injury caused thereby to their trade and the depreciation of the value of their premises. On its being shown by the petitioners that a substantial difficulty of access to their premises would be caused, the promoters withdrew their objections to the petitioners' *locus standi*, which was forthwith allowed by the Court.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken or interfered with; (2, 3, and 4) they have not the control of Miller's-lane, referred to in their petition, or any right or easements over it, or any greater rights or interests in it than the public generally; (5) neither the apprehended depreciation in the value of their property, nor any other allegation in the petition, forms any ground for their being heard against the bill.

Sir Mordaunt Wells (for the petitioners): The petitioners are a joint-stock company, carrying on the business of cotton-spinners. Although the promoters do not take our lands, they seek to stop up an important thoroughfare, Miller's-lane, which leads to our works. The lane forms a communication absolutely necessary for carrying on our business.

Mr. RICKARDS: Is it a public road?

Wells: Yes. At present we have two roads open to our carts leading into Miller's-lane. The promoters will stop up one, and the other is so narrow that there is room for only one cart abreast.

Pope, Q.C. (for promoters): As it is a case of substantial injury I will not oppose the petitioners' *locus standi* further.

Locus standi Allowed.

Agent for Petitioners, *Cooper*.

Agents for Bill, *Sherwood & Co.*

LONDON AND NORTH-WESTERN (RED- DISH TO LEEDS) BILL.

Petition of the *AIRE AND CALDER AND CALDER AND HEBBLE NAVIGATION COMPANIES*.

11th March, 1878.—(Before *Sir HARCOURT JOHNSTONE, M.P., Chairman*; *Mr. BRISTOWE, M.P.,* and *Mr. RICKARDS*.)

Railway—Navigation Companies—Canal Proprietors—Carriers and Freighters—Obstruction to Canal—Chain of Inland Navigation—Promoters under Statutory Obligation to keep open Canal—Competition between Railways and Canals—Not Created de novo—Improvement of Existing Railway Communication—Relief Line—Tolls—Complaint against Existing Legislation—Question not dealt with under Bill.

This was a bill for constructing a more direct line between two points to which

the promoters' railway already ran, and for this purpose it was necessary to divert a canal which was already the property of the promoters, but which was, nevertheless, scheduled for the purposes of the bill. The petitioners were the proprietors of a canal which joined the canal proposed to be diverted, both canals being links in a chain of inland water communication. They objected that, as carriers and freighters on this canal system, their trade would be injuriously affected by the obstruction caused to the canal by the proposed works. It was shown, however, that the promoters were under a statutory obligation to keep the canal in question open, that means would be adopted by which the obstruction would be of the most temporary description, and that they were already authorised, under certain conditions, to close the canal for repairs. The petitioners also sought to be heard on the ground of competition, but it was argued that no new competition was created by the bill, the promoters' railway already accommodating traffic between the same points, and the proposed line being merely a relief line. The petition further complained of the tolls charged by the promoters upon their canal as injuriously affecting traffic passing from their own, but it was pointed out that the bill did not in any way deal with this subject:

Held, that the petitioners were not entitled to be heard against the bill on any of the above grounds.

The *locus standi* of the petitioners was objected to, because (1) no lands, buildings, or works of theirs will be taken or interfered with; (2) they have no property or interest in the Huddersfield canal so as to entitle them to be heard in respect of the traffic therein or any obstruction thereto; (3 and 4) their petition discloses no such case of competition or interference therewith, or of injury by the proposed railway to their traffic, as entitles them to be heard; (5 and 6) the allegation as to the increased advantages of competition which will be afforded to the promoters by the new line is not such as to entitle the petitioners to be heard against the bill or in support of any revision or reduction of the tolls referred to in that allega-

tion, nor does the petition contain any allegation which entitles the petitioners to be heard on any ground.

Pember, Q.C. (for petitioners): The petitioners allege in their petition that they are the proprietors of the Aire and Calder navigation, and that under the Public General Act of 8 & 9 Vict., cap. 42, they are themselves carriers of goods upon their own navigation, the Calder and Hebble navigation, Sir John Ramsden's canal, and the Huddersfield canal, which latter has passed into the hands of the London and North-Western railway company, and is now scheduled under the bill, as is often done, even where, as in the present case, it is already the promoters' property. Our canal is a link in a chain of navigation, and it joins the Huddersfield canal, which is another link. The works proposed by the bill will cause an obstruction to traffic in the Huddersfield canal, and we ought to be heard to prevent such obstruction from damaging our traffic.

Pope, Q.C. (for promoters): With regard to that point, the London and North-Western company are under a statutory obligation by sect. 38 of 10 and 11 Vict., cap. 159, to keep open the Huddersfield canal.

Pember: But there is an actual diversion of the canal authorised by the bill which would over-ride that statutory obligation. Then as to competition, this railway coming along the south side of the canal will abstract our traffic, and that question must involve the question of rates, which, as I am not entitled to be heard upon it here, I claim to go before a Committee to discuss.

Pope (in reply): The petitioners are not even carriers on the Huddersfield canal as to the obstruction of which they claim to be heard.

Pember: The fact is that, the canal up to Huddersfield being wider than the canal beyond that point, most of our boats are too large to go further, and therefore we usually tranship at Huddersfield, although we do in fact go up further with some of our smaller boats.

Pope: The petitioners are seeking to get a hearing before the Committee on the subject of tolls, which they cannot do, because tolls are not dealt with by the bill. They cannot claim a landowner's general *locus standi*, as their own canal is not touched; and although in a sense they are freighters on the Huddersfield canal, they have no interest in that canal except as forming a link in a chain of navigation. As to the question of obstruction, it is true that there will be a diversion of the canal for a few feet, but inasmuch as we are under statutory obligation to keep open the canal, the diversion will not take place until the new channel is completed,

so that the obstruction will only be momentary, and will not even cause so much inconvenience as a temporary closing of the canal for repairs which we are empowered to make. As to competition, there is no new competition here. Not an ounce of traffic could be carried by the new line which could not be already carried by the existing line. The work proposed is really the improvement of the existing route between Stockport and Huddersfield, and the new line is merely a relief line for the present crowded traffic.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, *Grahames & Wardlaw*.

Agents for Bill, *Sherwood & Co.*

LONDON, BRIGHTON AND SOUTH COAST RAILWAY (CROYDON, OXTED AND EAST GRINSTEAD RAILWAY) BILL.

Petition of the CATERHAM AND GODSTONE VALLEY RAILWAY COMPANY.

18th February, 1878.—(Before the CHAIRMAN OF WAYS AND MEANS, in the Chair; Mr. BRISTOWE, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railways — Through and Local — Competition between.

In this case the petitioners sought to be heard against the bill on the ground of competition, and it was argued, *inter alia*, on behalf of the promoters that no competition entitling them to a *locus standi* could arise out of the bill, inasmuch as the petitioners were only the owners of a short local line, while the promoters' railway was a through railway to London:

Held, that this was no ground for refusing a claim to be heard on the score of competition, which the Court held to be sufficiently proved to confer a *locus standi* on the petitioners.

Venables, Q.C., appeared as counsel for the bill, and *Granville Somerset*, Q.C., for the petitioners.

Agent for Petitioners, *Bell*.

Agents for Bill, *Dyson & Co.*

MIDLAND RAILWAY BILL.

Petition of (1) GREAT NORTHERN RAILWAY COMPANY.

20th March, 1878.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Sir JOHN DUCKWORTH.)

Omnibus Bill — Railway Companies as Joint Owners and Partners—Previous Acquisition of a local line by Promoters—Option to Petitioners of Joint Purchase—Extension of time for Completion of Works, &c., by Promoters—Claim for Extension of Period of Exercise of Option by Petitioners.

A railway company, joint owners with the petitioners of railway A, had in a previous session obtained powers to acquire a local railway B, but in consideration of their joint interest with the petitioners in railway A, had inserted a proviso in their bill conferring upon the petitioners the power of exercising an option of purchasing a share in railway B within one year. This period of option was identical with that allowed to the promoters by Parliament, under the bill of the previous session, for the compulsory acquisition of lands and the completion of works in connection with railway B. The promoters under the present bill took powers to extend the period for their acquisition of lands and completion of works, but did not prolong the corresponding period for the exercise by the petitioners of their option of purchase:

Held, that, under the circumstances, the probability being that the periods for the completion of works by the promoters and for the exercise of their option by the petitioners were, under the Act of 1877, intentionally made co-extensive, the petitioners were entitled to be heard in order to ensure that this right should be preserved to them by the bill.

The *locus standi* of the Great Northern railway company was objected to, because (1) the only provision of the bill to which their petition relates is the extension of time; (2) the provision of the Midland Railway (Further Powers) Act, 1877, is not in any way altered by the bill, and

the proposed extension of time does not constitute a ground, nor is there any other ground upon which the petitioners are entitled to be heard against the bill or in support of their suggestion that the said provision of the Act of 1877 should be altered.

Pope, Q.C. (for petitioners): This is an omnibus bill, but our opposition is directed against clauses 24 to 27, which extend the period for the compulsory acquisition of land and the completion of works by the promoters in connection with the Manchester and South District railway. Our position with regard to that railway is this: the Great Northern railway company, the Manchester and Sheffield company, and the Midland company are joint proprietors of the Cheshire Lines company, having each subscribed one-third of that company's capital. In 1874 the Cheshire Lines committee, consisting of ourselves and the two other companies I have named, were authorised to work the Manchester and South District Railway, and in 1876 the committee proposed to purchase that company altogether, each subscribing one-third of the capital. From this proposal, however, we, as one of the three companies in partnership, dissented. The other two members of the committee obtained their bill, but at our instance a proviso was inserted in it by the Midland company giving us a *locus penitentie* if we chose to subscribe our share, viz., one-third of the capital of the acquired company, within one year. In 1877 the Midland company again came to Parliament, asking for power to acquire the whole undertaking themselves, as the Manchester and Sheffield company were unable to find the necessary funds, but they extended the option of joint purchase to the Great Northern railway for another year, namely, until August, 1878. The present bill is further to extend the time for the purchase of lands and the construction of works in connection with the acquisition by the promoters of this Manchester and South District railway, but it does not, like the Act of 1877, similarly extend the time for our exercise of the option of a joint purchase. Moreover, the line in question forms a connection with the Cheshire lines, in which concern we are partners, so that the Midland company are in fact seeking an extension of time for the construction of works, the user of which will also necessarily involve the user of joint property in which we are as much interested as themselves.

Venables, Q.C. (for promoters): We do not in the least affect the position of the Great Northern by asking for a prolongation of the powers of the Act of 1877.

Mr. RICKARDS: You do not give them a relative extension of time for exercising their option. They would say that the period for exercising their option was fixed with relation to the period for the completion of your works.

The CHAIRMAN: The fact that the periods for exercising that option and for the completion of your works are identical could hardly be a fortuitous circumstance. The Court *Allow* the *locus standi* of the Petitioners against clauses 24 to 27 inclusive, and so much of the preamble as relates thereto.

Agents for Petitioners, Dyson & Co.

Petition of (2) WIDNES TRADERS.

Railway Companies—Power to acquire new Line—Tolls on existing system extended to Purchased Line—Compound Rates and Tolls—Traders and Freighters—Opposing clause for acquisition of Line and adoption of existing Tolls—Amalgamation, virtual, by purchase of Line—Practice—Locus Standi admitted against part of Clause—Sustained as to whole Clause.

The promoters sought powers to acquire jointly with another company, with whom they were already connected as joint owners of certain other railways, a line used by the petitioners as traders and freighters. Clause 20 of the bill, besides empowering the promoters to acquire the line in question, authorised them to extend the scale of tolls in force upon their existing system to the newly-acquired line. The promoters conceded a *locus standi* to the petitioners against so much of the clause as sanctioned the adoption of their existing scale of tolls and charges upon the line they proposed to purchase, but not against the clause generally (which included the power of acquisition), or against compound rates, made up of rates charged in part upon the new line and in part upon the existing system:

Held, that the petitioners were entitled to a *locus standi* against the clause generally.

The *locus standi* of the petitioners was objected to, because (1) their petition relates partly to the tolls, rates, and charges to be demanded by

the Sheffield and Midland companies' committee, in respect of traffic passing over the West Widnes railway, which the bill empowers them to acquire, and partly to the tolls, &c., which the Sheffield and Midland companies' committee are authorised to demand in respect of traffic passing over the railways comprised in their existing undertaking. The bill does not in any way alter or affect the said authorised tolls, and the petitioners are not entitled to be heard in respect of any alteration or limitation of them; (2) the petitioners do not constitute such a proportion of the entire class of traders whose interests are alleged to be affected as to entitle them to be considered a representative body; (3) the petition discloses no ground for a hearing according to practice.

Little, Q.C. (for petitioners): The second objection to our *locus standi* is withdrawn. The part of the bill against which our opposition is directed is clause 20, which empowers the Manchester and Sheffield and the Midland companies' committee to acquire a private railway called the West Widnes railway, and additional lands in connection with the undertaking, and as the railway in question is to be part of the undertaking of the committee, the tolls, rates, and charges are to be those now imposed on the committee's railways, and they will charge short distance tolls on both parts of their system. As the promoters are asking that this railway shall be constituted part of their undertaking it is exactly as if they were coming for a new railway for the first time. The case most like this is that of the *North-Eastern Railway Bill*, *Petition of Coal and Iron Owners* (2 Clifford & Stephens 151). If, instead of applying their existing tolls to the railway they seek to acquire, they had formally enacted the same rates in this bill, we should have been entitled to be heard as traders and freighters on the line. This is practically an amalgamation against which we should be admitted to be heard. (*Great Western Railway Bill*, *Petition of Traders, &c., of Salisbury*, 1 Clifford & Stephens 132; *North-Western Railway Bill*, *Petition of Merchants of Liverpool* (1865), Smethurst 121.)

Venables, Q.C. (for promoters): The *locus standi* of the petitioners should be limited to so much of clause 20 as relates to the tolls and charges on the lines proposed to be acquired. Many of the allegations in their petition are directed against tolls on existing lines. We wish to exclude them from going into that.

Little: Where the charge is a compound charge comprised partly of tolls on the new line and partly of tolls on the other parts of the promoters' system, we have a right to be heard on the tolls generally. We object to their acquir-

ing the line at all, unless the tolls are put upon a proper footing.

Venables, Q.C.: Their right to be heard cannot extend beyond the rates affecting the new line. (*Monmouthshire Railway and Canal Bill*, 1 Clifford & Rickards 104.)

The CHAIRMAN: We *Allow* the *locus standi* of the Petitioners against clause 20, and so much of the preamble as relates thereto.

Agent for Petitioners, *Brown*.

Petition of (3) JOSEPH HARRIS, Esq.

Railway—Widening of Bridge—Landowner—Building Estate—Access to, rendered less Convenient—No Actual Obstruction—Injurious Affecting—Alleged Deterioration in Value of Estate—Amenities—Interference with by Railway Bridge—Degree of Injury.

A railway bill conferred upon the promoters power to widen a bridge over a street forming the most direct access to the petitioner's property, which was laid out for building purposes. The petitioner complained that the value of his property, for the purpose for which it was intended, would be deteriorated by the street being bridged over to such a width as to form a "dark and dangerous tunnel" through which it would be necessary to pass to his property. There was, however, no allegation that the access to his property would be actually impeded:

Held, that the proposal of the bill did not constitute such an injurious affecting as to entitle him to be heard against it.

The *locus standi* of Joseph Harris was objected to, because (1) it is not alleged nor is it the fact that the bill contains any provision to take or interfere with any of his land or property; (2) the street referred to in the petition (called Kent Street), is a public highway, and is not under his control or management, and he has no such special or exclusive interest therein as entitles him to be heard against the bill.*

* There were other objections to the *locus standi* of the petitioner with reference to certain agreements previously entered into between himself and the promoters, but the case appeared to be decided on the ground above set forth.

Little, Q.C. (for petitioners): Among other proposals contained in the bill is one for widening, by 50 feet, a bridge in Leicester over a street called Kent Street. The petitioner alleges that this street forms the only direct access from Leicester to his estate, which is being developed as a building estate, and is in process of being covered with houses. Petitioners whose access was narrowed by proposed works were heard against the *North Western Railway Bill*, *supra*, 119.

Mr. RICKARDS: That was a case of a factory, the access to which was obstructed.

Little: But this will have the effect of deteriorating the value of our property by making the only access to it a tunnel 177 feet long, which is an addition of 50 feet to its present length. This must amount to an injurious affecting.

Mr. RICKARDS: You do not allege that the access will be impeded?

Little: But we do object that if the said bridge be widened the result will be to make the chief approach to your petitioner's property through a dark and dangerous tunnel, and that the works, if carried out, will needlessly injure our property, the value of which greatly depends upon the character and convenience of Kent Street, which forms the only direct access to it. (*Great Western Railway Bill*, 1 Clifford & Rickards 25.)

Mr. RICKARDS: Do the road authorities petition?

Venables, Q.C. (for promoters): No; they have got a clause inserted in the bill. The injurious affecting here is not of a substantial character, and is, at the most, only an injury to the amenity of the estate to a most trifling degree.

The CHAIRMAN: We must *Disallow* the *locus standi* of the Petitioner.

Agent for the Petitioner, *Cooper*.

Agents for the Bill, *Sherwood & Co.*

RADCLIFFE AND PILKINGTON GAS BILL.

Petition of (1) GOVERNORS OF THE BOLTON FREE GRAMMAR SCHOOL.

7th March, 1878.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; and Mr. RICKARDS.)

Practice—S. O. 15 (Notice to Owners, &c., in the case of Burial Ground and Gasworks)—Gasworks—300 yards' limit—Landowners—Allegations in Petition insufficient—Amendments

of, must be by consent of Committee—"Land" distinguished from "Dwelling-house"—Notice of Gasworks Bill to Owners, &c.

A gas bill was opposed by certain trustees, as owners of adjoining lands, who had been served with notice under S. O. 15. The petition omitted to allege that the petitioners were owners of any dwelling-house within the limit prescribed by that Order, but the petitioners asked to be allowed to insert the word "house" in that petition, or that the word "land" might in this case be taken to include house, as they were prepared to show that they were in reality the owners of a dwelling-house within the prescribed limit :

Held, that it was not competent for the Court to allow any such material alteration in the petition ; and that the term "land" could not be so construed as to include "house," a special distinction between them having been intended in the Standing Order in question.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of the petitioners will be taken ; (2) the petition does not allege nor is it the fact that the petitioners are the owners, lessees, or occupiers of any dwelling house situate within 300 yards of the limits within which any gasworks or works for the manufacture of residual products may be made by the promoters under the powers of the bill ; (3, 4, and 5) none of the statements in their petition with regard to the situation and intended use of the petitioners' lands, nor their objections to the provisions of the bill, nor any allegations in their petition entitle them to be heard against the bill.

Lewin, Parliamentary Agent (for petitioners) : Though we do not allege in our petition that we have a house within 300 yards of the company's proposed works, we really have a house within nine yards and the promoters have served another notice: We do, however, allege that we have a plot of ground in close proximity to the gasworks proposed by the bill, and we object to the erection of the gasworks as injurious to our property. We ask to be allowed to amend the petition by inserting the word "house."

Littler, Q.C. (for promoters) : A committee only has power to allow petitioners to amend their petition.

Lewin : Then I submit that the word "land" must be taken to include house.

Mr. RICKARDS : The intention of S. O. 15 was to distinguish between owners of houses and owners of fields and meadows only.

The CHAIRMAN : We cannot Allow the *locus standi* of the Petitioners.

Agent for Petitioners, *Lewin*.

Petition of (2) LITTLE LEVER LOCAL BOARD, RADCLIFFE LOCAL BOARD, and PRESTWICH LOCAL BOARD.

Gas—Further Capital—Local Boards—Price of Gas not Dealt with—Practice—S. O. 188 A.—Auction Clauses—Sliding Scale—Insertion of in Gas Bill not Imperative.

The petitioners, who were the local authorities of the district supplied by the promoters, opposed a bill for raising further capital, but not dealing with the question of price, on the ground that it did not contain the auction clauses directed by Standing Orders of the previous session to be inserted in gas bills, or any reference to a sliding scale of rates. It was argued that, inasmuch as previous decisions showed that consumers were only entitled to be heard when any alteration in the price of gas was introduced in the bill, the omission of the auction clauses, and of all reference to price, might well have been intentionally made, so as to preclude all opposition on the part of the local authorities in the interests of consumers :

Held, that the insertion of such clauses in a gas bill, not dealing with the question of price, was not imperative under the Standing Orders, and their omission formed no ground for the petitioners' *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) their petition contains no allegation that the town or district of which they have the local management will be injuriously affected in the manner contemplated by the S. O. ; (2) as gas consumers they represent a very small fraction of the entire consumers, and they are not entitled to be heard

either as consumers or as representing consumers; (3) the bill contains no provisions affecting the petitioners in their representative capacity; (4) the statements as to and complaint against the promoters contained in the petition do not entitle them to be heard; (5) the petition contains no allegations entitling the petitioners to be heard either as landowners or in any other capacity.

Michael, Q.C. (for petitioners): The point I am about to raise is *res nova*. By S. O. 188 A. of last session it is incumbent upon gas companies to raise their further capital by auction clauses. This is the first bill since that Order which has not contained auction clauses.

Littler, Q.C. (for promoters): The S. O. does not say these clauses must be introduced.

Michael: Not in express terms, but they have been introduced in all other bills, whereas this bill contains no reference either to the auction clauses or the sliding scale of charges, and so by omitting all reference to price it prevents all opposition on the part of the local authority, in accordance with the decided cases, such as the *Sutton Gas Bill* (1 Clifford & Rickards 266) and others.

Mr. RICKARDS: It is by no means imperative upon parties bringing forward gas bills to put in any clauses with regard to price.

Michael: If, however, the promoters wanted to avoid any opposition being brought to bear upon them by the local board they have adopted exactly the right course.

The CHAIRMAN: We must *Disallow* the *locus standi* of the Local Boards.

Agent for Petitioners, Cooper.

Agents for the Bill, Sherwood & Co.

THAMES CONSERVANCY BILL.

Petition of THAMES VALLEY DRAINAGE COMMISSIONERS.

16th May, 1878.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Conservancy Board—Bill extending jurisdiction of—River Pollution, prevention of—Increase of Revenue—Drainage Commissioners—Rival Jurisdictions—Common area of Jurisdiction—Land and River Floods—Conflicting Authority, for prevention of—Select Committee, recommendation of, disregarded.

The conservators of the Thames promoted a bill to increase their revenue, and *inter alia* to extend the area of their jurisdiction over the tributaries of the river with a view to prevent the pollution of the water. The petitioners were a drainage board with powers for draining the land and the prevention of land floods in connection with a portion of the Thames, and for these purposes exercised a jurisdiction over the tributaries to the Thames in their district. They maintained that there was already a conflict of jurisdiction between themselves and the promoters as regards the portion of the river and its tributaries common to both bodies, and that by extending the promoters' jurisdiction the bill would further aggravate this conflict. They also complained that certain recommendations of a Select Committee of the previous session with reference to themselves were altogether disregarded in the bill. The promoters denied the conflict of jurisdiction, as although both parties exercised powers in a common district these powers were distinct, and the petitioners were under their Acts specially prohibited from all interference with the promoters' authority. With regard to the recommendations of the Select Committee, the promoters traversed the statement that the petitioners were the parties to whom those recommendations applied:

Held, that there was such a *prima facie* case of conflict of jurisdiction between the promoters and the petitioners, which would be increased under the provisions of the bill, as to entitle the latter to a *locus standi*, and that for the purposes of convenience the *locus standi* must be a general one.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., powers or privileges of theirs are interfered with; (2) their jurisdiction, rights, or authority are not diminished or altered; (3) their petition nowhere alleges that they are injuriously affected by the bill; (4) the extension of the jurisdiction and powers of the promoters for the prevention of floods and the navigation of the river in no way injuriously affect the petitioners; (5) the peti-

tioners' jurisdiction is by their Acts specially limited to such parts of the Thames as are not under the promoters' jurisdiction, and the bill does not extend the promoters' jurisdiction so as in any way to encroach upon or diminish the jurisdiction of the petitioners; (6) the objects for which the two jurisdictions were respectively established are entirely distinct, and do not involve any conflict of interests or obligations; (7) clause 3 of the bill does not affect the rights or powers of the petitioners inasmuch as they are already prohibited from permitting any sewage or offensive matter to flow into the Thames; (8) clauses 10, 11 and 12 do not affect the petitioners, who are not in any way called upon to contribute towards the expense of carrying out the objects of the bill; (9) the report of the Select Committee referred to in the petition in no way affects the question of the petitioners' *locus standi*; (10 and 11) certain statements in the petition containing reasons why the petitioners have not before carried out the provisions of their Acts, are irrelevant; (12) with regard to the petitioners' claim to have a sum of money handed over to them out of the sums proposed by the promoters to be raised under the bill, the petitioners have no claim statutory or otherwise to any part of the conservancy funds; (13 and 14) the petition generally only relates to past legislation, and neither on this ground nor upon any other have the petitioners any right to be heard against the bill according to practice.

Saunders (for petitioners): The jurisdiction of the conservators of the Thames extends from Yantlet creek up to Cricklade, and is confined to navigation only. Our jurisdiction extends from Long Wittenham to Thames Head, and we not only have powers over the Thames, but over all the tributaries flowing into this portion of the Thames, as well as over the adjacent land to an extent of 80,000 acres, which we are empowered to rate for the purposes of improving the drainage, storing water, irrigation, and the prevention of floods. For the purposes of our Acts, we can execute works in the Thames itself with the consent of the conservators, and if they refuse their consent, we can, under our Acts, appeal to the Board of Trade. It is clear, therefore, that at the present time the jurisdiction of the conservators overlaps our own in the portion of the river common to us both, and now this bill proposes to extend their jurisdiction so as still further to impede our action as the floods authority.

Richards, Q.C. (for promoters): We deny that you are the flood authority.

Saunders: But our Acts prove it. We have

jurisdiction over the tributaries of the Thames, and the bill proposes by clause 3 to extend the promoters' jurisdiction over them from a distance of three to ten miles from the Thames. In the Report of the Select Committee of last session upon the Prevention of Thames Floods, the commissioners recommend that the conservators of the Thames be empowered to charge the water companies a higher rate for taking water from the Thames than they at present do, and at the same time they recommend that out of this increased contribution from the water companies a sum of £2,500 should be handed over to us as the flood authority to be employed in the prevention of floods.

Richards: They say to the flood authority for the time being between Long Wittenham and Cricklade. They never name you as that flood authority.

Saunders: We are the flood authority between those points, and there is no other authority besides ourselves. One of the principal objects of this bill is to compel the water companies to contribute more largely to the funds of the Conservancy Board, and they adopt the Committee's suggestions as to the amount, but they altogether omit, in spite of the Committee's recommendation, to provide for the reservation of any sum to us for the purpose of preventing floods, and we claim to see that this reservation is duly made to us. The Committee also strongly advised a system of co-operation between the conservators and ourselves, but the conservators have refused altogether to treat with us with a view to our working together. We maintain that seeing the existing conflict between our jurisdiction and the strong recommendations of the Select Committee as to the prevention of floods in the Upper Thames, where we are the only flood authority, we ought to be heard against any extension of the promoters' authority or jurisdiction, which must result in a greater conflict between our respective jurisdictions, and a greater obstruction to our own action for the benefit of this portion of the river.

Richards (in reply): The petitioners have no jurisdiction over the Thames at all. Their jurisdiction is specially declared by their Acts to extend only over those parts of the river not under our jurisdiction.

Mr. RICKARDS: Both bodies appear to have certain powers over the portion of the Thames between Long Wittenham and Cricklade.

Richards: They can use it as the outlet for land floods, which they are concerned with, as opposed to river floods, which we alone are empowered to deal with. If they make any works in the bed of the river, as soon as they

are completed they must be handed over to us. Their Acts specially preclude their interference with our jurisdiction or action.

Mr. RICKARDS: At any rate they have jurisdiction over the Thames tributaries over which you seek an extended jurisdiction.

Richards: We only seek it to prevent pollution of the water of the Thames, and the petitioners are already prohibited from sending sewage or other polluting matter into the river.

The CHAIRMAN: Under the circumstances, and considering that both bodies appear to some extent to possess rival jurisdictions over a portion of the Thames, we think the *locus standi* of the Petitioners must be *Allowed*, and that the most convenient course would be to give them a general *locus standi* against the bill.

Agents for Petitioners, *Rose & Fry.*

Agents for Bill, *Wyatt & Co.*

WARRINGTON WATER BILL.

Petition of CORPORATION OF WARRINGTON.

8rd June, 1878.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Water Company—Increase of Capital—Extended Area of Supply—Municipal Corporation—Sanitary Authority, as representing Consumers—Public Health Act, 1875—Impurity of Water—Supply for Domestic and Trade Purposes—Interests of Local Authority with regard to, respectively—Increase of Rates Apprehended—Trade Supply, Loss on, to be borne by Domestic Consumers—Rates, not dealt with by Bill—New Works, outside limits of Borough, but affecting supply within Borough—Pressure for Raising Water, Insufficient.

A corporation as the municipal and sanitary authority of the district claimed a general *locus standi* against a water bill for increasing the existing capital of the water company, the construction of new works, and the enlargement of the area of supply. As representatives of the consumers they complained that much of the water proposed to be used was unfit for domestic purposes, and could not be made remunerative for trade purposes, and would, therefore, under the provisions of the original Act, involve

a loss on the domestic consumers, and that the proposed works were injudicious and unnecessarily expensive. They also complained that the bill extended the present system of pressure used in raising the water for purposes of distribution to the new works, and that this pressure was altogether insufficient for the requirements of the supply. The promoters objected that the works proposed to be constructed were not within the borough, and that as regards the supply of water for trade purposes, the petitioners were not concerned with the protection of trade interests. The petitioners also claimed to be heard on the ground that they apprehended an increase of rates at an early date on account of the expensive character of the new works, and of the unnecessarily large addition to the company's capital authorised by the bill in connection with the proposed works:

Held, that the petitioners were entitled to be heard on all questions connected with any new supply of water within the limits of the borough, whether for the purposes of domestic use or trade, but that their *locus standi* must be limited to the clauses dealing with these matters, and, in accordance with previous decisions, that they could not claim to be heard against the money clauses of the bill, the question of rating not being raised under it.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken, nor are the proposed works within their municipal borough, nor will its inhabitants be injuriously affected by the bill; (2) no powers are sought to break up or interfere with any roads or streets within their jurisdiction; (3) the bill proposes no increase of water rates, and the mere apprehension of a future increase is no ground for a hearing; (4) it is not alleged that the proposed extension of works will injuriously affect the supply of water within the borough; (5 and 6) if entitled to be heard as to the supply of water for domestic purposes, the petitioners can only be heard against clause 21, particularly after their admissions before the Committee of the House of Lords; (7) no property, rights, or interests of theirs will be injuriously affected by the bill, and they cannot be heard according to practice.

Richards, Q.C. (for petitioners): We are the municipal and urban sanitary authority for Warrington, and our objections to the bill are directed against the injudicious character of the proposed works, which will be of a most expensive character, and the unfitness of the water proposed to be taken under the bill for domestic purposes. Arising out of the latter objection is the further objection that whereas the water will be unfit for domestic purposes it cannot be remunerative if supplied for trade purposes only, and as at present constituted the company can make the domestic consumers pay for any loss accruing from the supply for trade purposes. We also claim to be heard on the ground that as the new supply cannot, under the circumstances, be remunerative to the company, it is clear that there must at an early date be a rise in the scale of rates, and as to trade and domestic supply we ask for clauses compelling the company to keep their accounts on these two heads distinct. With regard to the impurity of water it is true that the promoters have introduced clause 20 enabling them to lay a separate system of mains and pipes for the two purposes, but this is only an enabling power whereas it ought to be made obligatory. We also claim to be heard on the ground that the present pressure for raising the water for domestic and fire purposes is insufficient, and the bill proposes the same amount of pressure for the new supply authorised by the bill. We claim a general *locus standi* against the bill.

Mr. RICKARDS: Are any of the proposed works within the limits of the borough?

Richards: No; but the limits of supply include the borough, and the works may affect the character of the supply and the purity of the water.

Pope, Q.C. (for promoters): The petitioners may be concerned as the sanitary authority, under the Public Health Act, with the purity of the domestic supply; they cannot have any interest in the trade supply.

The CHAIRMAN: They have a power to stop nuisances, and those nuisances might arise from a bad trade supply. Bad water supplied to a brewer might affect the health of the inhabitants.

Pope: All the jurisdiction they have is over the supply of water as between the company and the consumers. As to the increase of capital, and a possible future increase of rates arising therefrom, you have previously decided that a corporation or local board cannot be heard to raise that question. (*South Staffordshire Water Bill, 1 Clifford & Rickards 187.*) We will concede them a *locus standi* against clause 21, which deals with the purity of water, and clause 23,

which deals with the pressure to be used for raising the water. With regard to the rates question we are already at our maximum rates, and cannot under this bill, any more than our other Acts, go beyond them.

The CHAIRMAN: If you once admit that they are interested in the question of supply and purity of water at all, it is very difficult to say that they are not to go into the question of the water supplied from all your reservoirs and all your works for whatever purpose.

Pope: We do not, as far as new works are concerned, add to the quantity of impure surface water, and clause 21 is introduced to prevent its supply for domestic purposes.

Richards: As the municipal authority, we are interested in the manufactures of Warrington.

The CHAIRMAN: We think the petitioners are entitled to be heard on all clauses relating to any new supply within the borough, both for domestic and trade purposes, and to the works affecting such supply. We think they are also entitled to be heard on the clause about laying down fresh pipes, and on the clause as to pressure.

Pope: It would be almost impossible to distinguish between works for the supply of water within and works for the supply of water without the borough.

Richards: Clause 6 is the works clause. If we succeed in getting the Committee to strike out any of the new works we ought to be heard to get a proportionate amount of the capital struck out.

Pope: The question of capital does not affect the interests of the borough.

Mr. RICKARDS: There are no new rating powers in the bill.

The CHAIRMAN: We cannot admit the petitioners on the question of finance. We *Allow* their *locus standi* against clause 6 as to construction of works; clause 12 as to the power to take water, impound rivers, &c., for the purposes of the Act; clause 20 as to power to lay down separate pipes for domestic and trade uses; clause 21, as to the purity of the water; and clause 23 as to the pressure to be exercised for raising and supplying the water.

Agents for Petitioners, *Grahames & Wardlaw.*

Agent for Bill, *Lewin.*

WATERFORD, DUNGARVAN, AND LIS-MORE RAILWAY (EXTENSION) BILL.

Petition of CORPORATION OF WATERFORD.

3rd June, 1878.—(Before Mr. PEMBERTON, M.P., in the Chair; Sir J. DUCKWORTH, Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railway Bill—Guarantee as to, by County Grand Jury in Ireland—Municipal Corporation opposing, as Landowners—Representation of Ratepayers by, as to Railway Guarantees—Representation of Ratepayers by County Grand Jury—Landowners' Petition, Statements in, not restricted by Court—Landowners, general locus of—Practice as to—Representation of Public by.

A bill, promoted by a railway company in Ireland, was opposed by the municipal corporation of Waterford, whose land would be compulsorily taken for the purposes of the line, and who urged, *inter alia*, that the guarantee of interest under statute by the grand jury of the county of the city would be prejudicially affected under the bill. The company did not deny that the petitioners were entitled to a general *locus standi* as landowners, but contended that they had no right to appear as representatives of the county ratepayers in respect of the guarantee, and that the petitioners should not, therefore, be allowed to appear before the Committee upon the allegations made by them in this capacity. The ratepayers of the county of the city of Waterford had petitioned against the bill on these grounds, and their *locus standi* was not objected to:

Held, that the corporation being entitled to a general *locus standi* against the bill, it would be contrary to the practice of the Court to restrict their appearance to certain allegations in their petition, and that their right to represent the ratepayers on the subject of the guarantee was a question to be determined by the Committee on the bill.

(*Per Cur.*) A landowner, over whose property compulsory powers are sought, is not heard merely in defence of his own land, but,

according to the practice of Parliament, is allowed to appear as the representative of the public, opposing altogether the construction of the proposed works.

The *locus standi* of the mayor, aldermen, and burgesses of the borough of Waterford was objected to, because (1) they claim to represent the ratepayers of the city and the county of the city of Waterford liable to be rated and assessed for the guarantee to the railway; but under the Acts by which the county and the county of the city of Waterford were made liable in respect of such guarantee, the same is to be paid out of grand jury cess, to be raised and levied by grand jury presentment, and the petitioners do not therefore represent the ratepayers in respect of the guarantee; (2) the grand jury of the county of the city of Waterford are by statute constituted, to the exclusion of any other authority, the authority to represent the ratepayers liable to the payment of grand jury cess on account of the guarantee; (3) the petitioners are the municipal authority for the purposes of the municipal government of Waterford, but do not represent the ratepayers with respect to the guarantee, inasmuch as many of the persons liable to the payment of grand jury cess in the county of the city of Waterford are not entitled to vote at municipal elections; (4, 5, and 6) it is not alleged that the liability of the county of the city will be increased, or that the city would be injuriously affected by the bill.

Holmes, Parliamentary Agent (for petitioners): The corporation own every inch of land on which the works contemplated by the bill are to be executed, and we allege that fact in our petition.

O'Hara (for promoters): I do not dispute that the land of the petitioners is to be compulsorily taken; but I say that they can have no claim to represent the cesspayers. The guarantee touched by the bill is enforceable by the grand jury of the county of the city, not by the municipal corporation.

Mr. RICKARDS: But if the corporation are landowners, they can oppose the guarantee and everything else.

O'Hara: No doubt they have a general *locus* against the taking of the land and all the provisions of the bill, but we object to their claim to be the local authority representing or acting in lieu of the grand jury, who really represent the ratepayers on this question.

Mr. RICKARDS: A landowner is not restricted to the mere defence of his property. He can go into the whole of his petition if his land is to be

compulsorily taken, and we know that landowners are constantly made use of by other parties for the purpose of urging against a bill objections which do not affect them as landowners. It will be open to you to argue before the Committee that the opposition of the petitioners in respect of the guarantee does not come from the proper quarter, but when a landowner comes before us, and it is admitted that his land is to be compulsorily taken, we have no alternative but to give a general *locus*.

O'Hara: Yes, as landowners, but not as people in an entirely different capacity.

The CHAIRMAN: We have no jurisdiction to strike any paragraph out of the petition. When the *locus standi* of a landowner is allowed, we do not say "as a landowner," we say "*locus standi* allowed."

O'Hara: There is a ratepayers' petition, and we have conceded their *locus*, yet here we have the municipal corporation in the guise of landowners professing to represent the ratepayers also. Thus we shall have to fight both before the Committee, and if the opposition of the municipal corporation is not limited by this Court, directly we object in Committee to their going into the question of the guarantee, they will say, "It is alleged in our petition."

Mr. RICKARDS: Your argument amounts to this—that a landowner should not be heard except in defence of his own land. That is not

the practice of Parliament. He is allowed to appear, and in fact does appear, as the representative of the public, opposing altogether the construction of the work proposed to be authorised.

O'Hara: No doubt he is allowed to urge public objections, but that is a different thing from appearing on the part of a body who can be represented and are represented by others.

The CHAIRMAN: It is not the practice to say in what capacity a person petitioning is allowed to be heard. The *locus standi* is allowed generally, or is allowed against certain clauses.

Mr. RICKARDS: The rule that a landowner has an unlimited *locus standi* is a rule which has not been laid down by the Referees, for it existed long previously. If the corporation presume to speak as representing the ratepayers, you will say to them that they have nothing to do with the matter.

O'Hara: Whoever appears for them will say that the objection has been taken before the Referees, and was overruled by the Referees.

Mr. RICKARDS: We do not consider the case an exceptional one at all; it is quite an ordinary case.

Locus standi Allowed.

Agents for Petitioners, *Holmes, Anton & Greig*.

Agents for Bill, *Muggeridge & Badham*.

END OF REPORTS OF 1878.

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CLIFFORD AND RICKARDS'S *LOCUS STANDI* REPORTS.

VOL. II., PART III.

CASES



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COURT OF REFEREES

ON

Private Bills in Parliament.

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P R E F A C E .

THE Reports now issued comprise CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Session 1879, and form Part III., Vol. II., of the new Series of *Locus Standi* Reports by CLIFFORD & RICKARDS, in continuation of the Reports of CLIFFORD & STEPHENS.

The Index of Subjects refers to Part III., now issued. An Index of Cases decided in the three Sessions, 1877-8-9, and comprising Parts I., II. and III., is also supplied.

Vols. I. and II , of "Clifford & Stephens," and Vol. I. of "Clifford & Rickards," with Parts I., II. and III. of Vol. II., contain a Record of the Decisions of the Court of Referees for the last thirteen years, from the Session of 1867 to that of 1879 inclusive.

TEMPLE, March, 1880.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1879.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1880.

ALLOA RAILWAY BILL.

Petition of (1) The FORTH BRIDGE RAILWAY COMPANY.

13th March, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railways—Competition between—Apprehended Diversion of Traffic by Construction of Bridge—Bridge Authorised but not Made—Alternative Routes—Construction of Bridge to take place of Ferry—Through and Local Traffic—Improvement of Existing Communications—No new Competition created—Injury too Remote.

The promoters of the bill sought powers to construct a short railway from a junction with an existing line belonging to another company (the Caledonian) to the town of Alloa, to which the petitioners' railway already ran; and the bill provided for the construction of a bridge across the river Forth. The petitioners were already empowered, under an Act of 1873, to construct a bridge on a great scale, and at an enormous cost, across the river Forth, which bridge was intended to accommodate, among other traffic, that passing from Alloa to the south. The only existing means of conveying traffic across the Forth, where it was now intended by the promoters to build a bridge, was by

a ferry, and the petitioners contended that the proposed bridge would feed their competitors, the Caledonian company, with traffic direct from Alloa, and thus injure their own Forth bridge route southwards. It was objected by the promoters that the proposed bridge would be no less than twenty miles from the Forth railway bridge, and that at the most it would create no new competition, but only improve an existing one :

Held, that the competition (if any) created by the bill was not of such a character as to entitle the petitioners to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands, &c., of theirs are taken, or rights or interests interfered with under the bill ; (3) although they were incorporated so long ago as 1873, for making certain railways and also a bridge across the river Forth, near Queen's ferry, no progress has been made towards carrying out the undertaking ; (4) no competition will arise between the Forth bridge railway (if it is ever made) and the Alloa railway. The Alloa railway is a short local line, three miles in length, terminating in the town of Alloa, and is intended and laid out for the accommodation of the traffic of that town. At present a ferry, which is in the hands of the Caledonian railway company, affords the only accommodation for the traffic across the river at Alloa, and it is inadequate for the requirements thereof. The proposed railway will simply

improve the communication across the river by substituting a bridge for a ferry; (5) the Forth bridge railway (if it is ever made) cannot either by itself, or in connection with other railways, afford the accommodation which Alloa and its immediate neighbourhood require for local and through traffic. The point at Queen's ferry, where the Forth bridge is proposed to cross the Forth, is nearly 20 miles distant from the point of crossing by the Alloa railway; (6) they have no ground for a hearing according to practice.

Clerk, Q.C. (for petitioners): The bill, which although promoted nominally by an independent company, is really a Caledonian company's project, is for making a line running out of the Alloa branch of the Caledonian line at a point south of the Forth, crossing the Forth by a bridge about a mile to the west of the existing ferry, and terminating at Alloa without making any connection with any other railway there. We were incorporated by an Act of 1873 for making certain railways, which were intended, by a connection with the North British railway system, to accommodate, and are sufficient to accommodate, the town of Alloa for traffic therefrom to the south. Our undertaking of 1873 embraces the formation of a bridge or viaduct over the estuary of the Forth, at Queen's ferry, of almost unequalled magnitude, at an enormous cost. The construction of the railway and of the bridge across the Forth proposed by the bill must create a new and competing route with our railway, and especially with the bridge across the Forth, authorised by our Act of 1873, which is really an undertaking of great national importance. At the present time there is no direct means of communication by railway for traffic passing over the Caledonian railway from Alloa to the south, that traffic having to pass across the ferry before it reaches the Caledonian branch, called the South Alloa branch. The new bridge, therefore, will be in direct competition with our Forth bridge. The bill is not for the simple local purpose which the promoters set forth in their objections, but a scheme promoted, not directly by, but in the interest of, the Caledonian company, and the effect of it would be to enable the Caledonian Company to take the whole of the traffic from South Alloa directly away to their system, and to deprive the Forth bridge of that traffic.

Pember, Q.C. (for promoters): The Forth bridge is 20 miles away from the proposed bridge, and the difference in favour of our route, say from Alloa to Carlisle, would be 56½ miles. That is not a sort of competition to entitle them to be heard. (*Great Northern Railway (No. 2) Bill*, 2 Clifford & Stephens, 270.) The object of the Forth bridge is for the conveyance of the great

through traffic between England and Scotland, whereas the object of this little bridge is for the carriage of the local traffic from Alloa by a better means than by the Caledonian railway and ferry. The Caledonian company, though they have no railway on the north side, have a booking office and receiving office for goods in Alloa itself, so that, admitting competition with the petitioners' bridge to be possible, this scheme would at the most improve an existing competition. The case of the petitioners, as owners of the Forth bridge, is precisely on all fours with the *Severn Tunnel* case, in 1872 (2 Clifford & Stephens, 244.) This is only giving an improved mode of communication, not even in substitution for the existing ferry—for that will not be given up. If by this line the Caledonian carried traffic in competition with the North British in the way apprehended by the Forth bridge company, it would only be the same competition as is now carried on—seeing that the Caledonian company carry traffic from Alloa now—but it would be carried on by improved means of competition.

The *locus standi* of the Petitioners was *Disallowed*.

Agents for Petitioners, *Simson & Wakeford*.

Petition of (2) The GREAT NORTHERN AND NORTH-EASTERN RAILWAY COMPANIES.

Railways — Competition — Alternative Routes — Diversion of Traffic — Scheme Promoted by Competing, though nominally by Independent Company — Working Powers — Traffic Facilities, what these Include — Booking Arrangements for Through Traffic, Statutory Provisions for — Alleged Interference with — Local and Through Traffic — Former Legislation — Alleged Attempt to Evade — Arbitration, Statutory Provision for.

The bill was one for authorising the construction of a short railway which would act as a feeder to the Caledonian railway system by connecting it with an important town. The petitioners were two companies, whose railways formed part of a through route between England and Scotland known as the east coast route, to distinguish it from another route known as the west coast route. By previous legislation, Parliament had affirmed the principle of affording equal facilities in all respects to the companies whose lines formed each of

these rival routes, and the petitioners complained that the present bill was subversive of that equality. The bill was promoted by an independent company, but it was to be worked by the Caledonian company, and a previous Act had provided that in the event of any extension of the existing railways or of the acquisition or lease of any railway by the Caledonian company, equal facilities should be given to the petitioners over the new line to those they enjoyed over the existing line. The petitioners complained that as the proposed railway would only be worked and would not belong to or be leased by the owners of the existing railway, they were prevented from enforcing the letter of the previous Act, while the bill was really in opposition to the spirit of it. It was objected that, if really injured, the petitioners might avail themselves of a section in the Act of 1865, providing for a reference to arbitration :

Held, that under the circumstances the petitioners were entitled to be heard, to contend that the facilities granted by the former Act should be extended to the present bill.

The *locus standi* of the petitioners was objected to, because (1 and 2) the Alloa railway will not communicate with the railways of the petitioners or either of them, and no lands or property of the petitioners will be taken or used under the bill, nor their rights or property interfered with; (3) the railway proposed by the bill is for the purpose of improving the means of access to Alloa by the erection of a bridge across the river Forth, near to an existing ferry, leased to, and exclusively worked by, the Caledonian railway company; (4) the allegations in regard to the continuous lines of communication between England and Scotland, called in the petition the "west coast route," and the "east coast route," do not apply to the railway proposed to be authorised by the bill, which is only three miles in length, and its construction will in no way impede or affect the transit of traffic as freely and expeditiously over the railways forming the east coast route as over those forming the west coast route to and from the north of Scotland; (5) the petitioners have no right to put their clerks, porters, and agents in the Caledonian company's station on the north side of the Alloa ferry. Whatever rights

they may have in this respect with regard to the station on the south side of the ferry, or any part of the Scottish central railway, under the Amalgamation Act of 1865, are in no way interfered with by the present bill. The construction of the Alloa railway cannot deprive the petitioners of any protection for east coast traffic to which they are entitled by existing legislation, nor will traffic be diverted by the proposed railway from existing routes in which the petitioners claim an interest; (6) there is nothing whatever in the bill to prevent the Railway Commissioners from dealing with any rights the petitioners may have. They have, however, never exercised any such rights upon the South Alloa branch of the Scottish central railway as are indicated in their petition; (7) the proposed railway is a purely local improvement, and the interests of the petitioners, in connection with their rights under the Scottish Central Amalgamation Act of 1865, are too remote to be appreciable, or to entitle them to be heard according to practice; (8) the petition discloses no ground for a hearing according to practice.

Pope, Q.C. (for petitioners) : We claim a *locus standi* against the bill on the ground that it is contrary to the legislation of 1865. The general spirit and purpose of the Caledonian and Scottish Central Railways Amalgamation Act of 1865 (28 & 29 Vict., c. 287) was to give equal facilities to the east and west coast routes, respectively, between England and Scotland. We are the two principal railways forming constituent parts of the east coast route, as defined in section 87 of that Act. By that Act the Scottish central railway was amalgamated with, and merged in, the present Caledonian railway company, who are substantially, although not nominally, the promoters of the present scheme, and who carefully avoid bringing themselves within the terms of that Act by not taking power to acquire or lease the proposed railway, but only to work it. The obligations imposed by Parliament upon the Caledonian company in favour of the east coast companies are irksome to the former; and this bill, promoted colourably by independent parties, is the thin end of the wedge, which is to relieve them of their obligations to grant equal facilities to both east and west coast routes. The preamble of the Act of 1865 recites the general principle settled by Parliament in the matter of these competitive routes; and the 87th section declares that "it is expedient that nothing should be done which shall impede or obstruct the flow or transit of traffic of every description as freely and expeditiously over the railways forming the east coast route as over those forming the west coast

route, to and from the north of Scotland ;" and the same section defines the east coast traffic as "traffic of every description passing or intended to pass to or from any place on or beyond the railway, and which previously to the commencement of the Act formed the undertaking of the Scottish central railway company, and every or any part thereof, *via* Edinburgh and Berwick, from or to any place on or beyond, and *via* the railways forming the undertakings of the North-Eastern railway company, and of the Great Northern railway company respectively, and every or any part of those respective railways, and also all traffic which, from time to time, shall be treated as east coast traffic by agreement or arbitration." The Amalgamation Act then contains a series of provisions (sections 88 to 105) for the protection of the east coast traffic. The 90th section authorises the east coast companies (namely ourselves), or either of them, as respects the passenger east coast traffic, to employ their own clerks for booking such traffic at any present or future passenger station of the Scottish central line. The South Alloa branch, which was a Scottish central line, terminates at the ferry across the river Forth. So long as the passenger station of the Scottish central (now the Caledonian) company is at South Alloa, we, the east coast companies, can have our clerks there and maintain an equal competition with them, but if they get this proposed line in the hands of an independent company, though worked by agreement by the Caledonian company, the line being for all purposes of traffic as much a part of the Caledonian line as the original line, it will yet be contended that the station is not a station upon the Scottish central line, and, as a matter of course, we shall not be able to put our clerks there, so that the Caledonian company will have the entire monopoly of the station; our clerks will have to be in the South Alloa station, where no train will run, and where a ferry will be interposed between us and the source of traffic; and the trains to Alloa from the north, instead of going to the ferry, will be diverted on to the line of this little independent company, which is to be worked by the Caledonian company. The 94th section gives to the east coast companies, or either of them, power to run over and use the Scottish central line, and the stations upon and connected with it; and the same section contains elaborate regulations as to the use of the said line and stations, offices, &c.; and then the 99th section, which is the section that this bill seeks to evade, provides that "the several facilities, powers, privileges, and provisions by this Act granted, secured, and provided as regards east coast traffic, shall extend and

apply to any railway in extension of, or connected with, the Scottish central line, which shall belong or be leased to the company" (Parliament, by an oversight, has omitted the words "or worked by") "either solely or jointly with any other company, in all respects as if such railway had been part of the Scottish central line, but the power of running by this Act granted shall not extend to any such railway." Strictly and literally, this is not a future station of the Scottish central; strictly and literally it is not a line "belonging to" or "leased by" the Caledonian company; but for all practical purposes of traffic, for all the purposes which Parliament intended, in the interests of the public, to protect, it is a part of the Scottish central. We want to have over this new company the same rights that we should have over the Scottish central, now the Caledonian, that is to say, that they should not, by starting, as it were, a little independent company, and agreeing with it to work it, evade the words of the 99th section, which make the facilities granted to us applicable to any line in extension of the Scottish central, which shall belong to, or be leased by, them. We object in our petition to the interposition of a railway apparently independent of the Caledonian railway company between the South Alloa branch and the town of Alloa, which we allege may deprive us of the protection for east coast traffic provided by this Act, and we also complain that the provisions of the said Act concerning arbitration will not reach an apparently independent company. The proposed Alloa railway is not required by any public or local necessity, and its construction may prejudicially affect us by diverting traffic from existing routes in which we are interested, which diversion would come within the spirit of section 100 of the Act of 1865.

Mr. RICKARDS: The Caledonian company cannot obtain power to purchase or lease this line except by going to Parliament for fresh powers.

Pope: If they purchase or lease this line, they put themselves within the terms of the 99th section of the Amalgamation Act, but they have stopped short of that, and I say we are equally entitled in the interests of the public to facilities over this line, though it is not leased or purchased, but only worked by them. We claim a *locus standi* against the preamble so far as it concerns the question of granting the same facilities to the east coast route as it enjoyed under the Act of 1865. We do not wish to go into the general question of the advisability of the proposed line.

Pember, Q.C. (for promoters): The provisions of the Amalgamation Act of 1865 were intended to apply to through traffic between England and

Scotland, not to local traffic, which is what will be accommodated by this proposed line. Although we shall not come under the 99th section of that Act, not being leased or belonging to the Caledonian company, we shall, if it turns out to be the fact that the east coast traffic is injured by our line, come under the 100th section, which prohibits the Caledonian company from giving greater facilities to any other traffic than they do to the east coast traffic. Supposing traffic arising at Alloa and passing over this little line and over the Caledonian line to be traffic in competition with east coast traffic, it is clear that the Caledonian company would be giving to that traffic certain facilities, because the better you work traffic the greater facilities you give it, and the Caledonian company would be at once brought under the operation of section 100. The proper place to ask for those facilities is not Parliament, but the tribunal which can enforce what Parliament has already done.

Mr. RICKARDS: Is that term, "giving facilities," applicable to the working of the line of one company by another?

Pember: It means giving facilities to the traffic of the company, which you do by working its line for it. The petitioners' complaint is wholly unsubstantial, and at the best is an apprehension of future injury which is no ground for a *locus standi*. Any real case of injury at the hands of the Caledonian company could be met by reference to the standing arbitrator appointed by the Act of 1865. If the line is leased to the Caledonian company, the petitioners' remedy would be under section 99; if worked by the Caledonian company to the detriment of the east coast company, the remedy would be under section 100 of that Act. At any rate, the petitioners' *locus standi* must be limited to seeing that they have facility clauses inserted.

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed; but it must be understood that the *locus standi* is granted in order to enable the petitioners to contend that the facilities granted by the Act of 1865 should be extended to the bill of 1879.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Martin & Leslie.

BANBURY AND CHELTENHAM DIRECT RAILWAY BILL.

Petition of ANNIE TERRY AND OTHERS, EXECUTION CREDITORS OF THE BANBURY AND CHELTENHAM COMPANY.

16th July, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railway—Additional Capital—Debenture Stock—Pre-Debenture Stock—Arrangement Between Existing and Proposed Debenture Stockholders—Execution Creditors—Position of, in Equity—Postponement of Claims of, upon Estate of Promoters—Apprehended Injury to Legal Status.

A railway company sought power to raise further capital in the form of debenture stock. By arrangement with the holders of existing debenture stock, the interest on the proposed stock was to be a prior charge to that on the existing debenture stock. The petitioners were the legal representatives of an execution creditor, and they complained that inasmuch as the Courts of Equity had in previous cases postponed the claims of an execution creditor upon the earnings of a railway company to those of debenture holders, the present bill would, under the arrangement arrived at between the debenture holders, still further postpone such claims upon the estate of the company. It was contended on behalf of the promoters that the arrangement between the debenture holders could not affect the status of the petitioners who were not parties to it:

Held, however, that the petitioners' interests were threatened in such a manner as to entitle them to urge their case before a Committee.

Semble. Where it is doubtful what effect a bill will have upon the legal status of a petitioner, it is sufficient for the purposes of *locus standi* that he should establish a *prima facie* case of probable injury.

The *locus standi* of the petitioners was objected to, because, although it appears from the petition that the petitioners are execution creditors of the promoters, and that the stock

proposed to be raised by the bill and the interest thereon is to take priority of the petitioners' lien, the bill does not in reality contain any provision by which any rights or remedies against the promoters now possessed by the petitioners are, or can be, in any way prejudiced or altered, or any provisions in respect of which they are entitled, according to the practice of Parliament, to be heard against the bill.

Pember, Q.C. (for petitioners): The petition is the petition of the widow and trustees of the estate of Mr. Terry, who was the contractor for the line, and the creditor of the company, under a writ of *elegit*, to an amount of over £5,000. Under that writ, his representatives have legal possession of the estate of the company, but it has been decided in the cases of *Legg v. Mathieson* (2 Giffard, 71), and *Stevens v. Mid-Hants Railway Company* (L.R. 8 Chancery Appeals, 1064), that in equity he is postponed to the debenture stockholders, who are anterior in date. That being the petitioners' position, the company come for a bill to raise £60,000 for the completion of a certain portion of their line. This £60,000 they propose to raise by debenture stock, and clause 3 provides that "such debenture stock shall be distinguished as 1879 debenture stock and shall bear interest at the rate of not exceeding 5 per cent. per annum, and the same and the interest thereon shall rank in priority to the 1873 debenture stock and the 1877 debenture stock, and the interest thereon respectively, and shall be a first charge upon the sum payable in respect of debenture interest by the Great Western railway company under the agreement scheduled to, and confirmed by, the Act of 1873." The proposed stock is therefore to be in priority over stock to which any claim, according to the dictum of the Court of Equity, is to be postponed. Our claim against the estate and earnings of the company will therefore stand third instead of second as at present.

The CHAIRMAN: Your view of the matter is that if this clause becomes law, though you are not mentioned in the bill, yet still, by its postponing debenture stocks that have priority over you in equity, you are postponed also?

Pember: Absolutely. The promoters rely on the notion that a creditor has no right to be heard against a bill. That may be so in the case of an ordinary creditor, but the petitioners represent an *elegit* creditor, who has a distinct priority which may be interfered with by the provisions of the bill. (*Crystal Palace and South London Junction Railway Bill*, 1869, 1 Clifford & Stephens, 165.)

Mr. RICKARDS: What are the rights and powers of a creditor who has taken possession of lands by a writ of *elegit*?

Pember: He is entitled to the satisfaction of his debts out of the earnings of the company next after payment of debenture shareholders.

Littler, Q.C. (for promoters): That is to say, debenture stockholders who are prior in date to the *elegit* creditor.

The CHAIRMAN: The preamble recites that these debenture holders have consented to be postponed to the holders of the £60,000 debenture stock proposed to be raised under the bill, and the bill is in the nature of an agreement to that effect. Does that postpone the petitioners' rights, also?

Pember: We apprehend it might do so. At any rate, that would be a question of very great difficulty, and, therefore, we ought to be before Parliament to prevent such a possibility. This is analagous to tacking a mortgage. This £60,000 ought to be a third mortgage. It is allowing the first mortgagees to tack this mortgage and put it before their own to my detriment. The Court of Equity would postpone me. Our *status* is going to be altered, and we should be heard to protect our interests.

Littler, Q.C. (in reply): The *Crystal Palace and South London Junction Railway* case cited for the petitioners is not a precedent, as that was a bill authorising parties in debt, and unable to pay their debts, to expend capital, not upon the *corpus* on which the debt existed, but on a fresh undertaking, and to devote to that fresh undertaking the profits arising from the existing undertaking. It was also a line in working, and therefore the petitioner could not take possession of it or do anything interfering with its working. Here the petitioners are in possession of the lands and could treat us as trespassers if we went upon it to proceed with our undertaking. We are not proposing to put a new mortgage over their heads. The first and second mortgagees have consented that this £60,000 shall be a prior charge over them, but the bill says nothing whatever about the person who is in possession under the *elegit*, and, consequently, whatever legal rights such person may have will exist exactly the same as now.

Mr. RICKARDS: You are increasing the debenture debt, and according to the decisions the debenture debt takes precedence?

Littler: We are simply as a domestic arrangement putting this new debt in place of so much old debt, taking care it shall have precedence of the old. It is a private agreement which cannot possibly affect persons who are not named as parties to it. We will undertake to insert a clause preserving all the rights of the judgment creditor whatever they may be.

Pember: I claim a *locus standi* to see that such a clause is put in. I am entitled to be

heard against the bill, the principle of which is involved in clause 3. I cannot accept an undertaking to insert a protective clause, when I am entitled to a *locus standi* before the Committee.

Little: Under any circumstances clause 5 not only protects Mrs. Terry's interest, but actually improves her position because it provides for a lower rate of interest upon debenture stock than is now paid, and there will be by the proposed arrangement a saving of interest of £4,330, or £1,300 a year more than is required for paying the interest upon the new stock, so that Mrs. Terry will be in a much better position than she is now.

Pember: How am I to have a guarantee that clause 5 will be adopted by the Committee?

The CHAIRMAN: The promoters increase their capital, and in the form of debenture stock, and thus appear to interpose a larger preferential charge before the petitioners than there is at present.

Little: That may appear to be the case, but is not so really. Suppose this were a large landed estate which was encumbered, and, there being three classes of mortgagees, the owner wanted to raise more money, and went to Nos. 1 and 2 and said, "I can raise money if you can say as between yourselves that you will reduce your interest, and postpone your charges to the new mortgagees," that would not bind No. 3. No. 3 would be left to all his remedies. The case of the petitioners here is precisely similar. They are not parties to the arrangement, and their *status* remains unaffected.

The CHAIRMAN: We are of opinion that the *locus standi* of Mrs. Terry and others must be allowed.

Little: I presume you will limit Mrs. Terry's opposition to a clause.

The CHAIRMAN: We do not see how we can divide the bill, which is one to raise further money.

Agent for the Petitioners, *Rees*.

Agents for Bill, *Sherwood & Co.*

BRENTFORD, ISLEWORTH, AND TWICKENHAM TRAMWAYS BILL.

Petition of (1) LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

23rd April, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir J. DUCKWORTH, and Mr. RICKARDS.)

Tramway—Railway Company as Frontagers—
And as Landowners—Tramway Crossing Rail-

way Bridge near Railway Station—Railway Company Bound to Maintain Roadway—Frontagers' Opposition, Nature and Extent of—S. O. 135 (as to Frontagers in Tramway Bills).

A railway company petitioned against a tramway bill as frontagers, access to one of their stations being obstructed by the proposed tramway. Their *locus standi* on this ground was conceded; but they also claimed a general *locus* on the ground that they owned the railway bridge upon which the entrance to their station was situated, that they were liable to maintain the roadway over the bridge, and were thus in the position of landowners:

Held, that the petitioners were entitled to be heard, under S. O. 135, with regard to any injury which might be done to them by the tramway across their railway bridge, but not generally as landowners.

The *locus standi* of the London and South-Western railway company was objected to, because (1) no land, property, right, or interest of the petitioners will or can be taken; (2) the only interference alleged with the petitioners' railway or property is, that the intended tramway No. 3 is proposed to be constructed in the road in front of their St. Margaret's station, near to Twickenham and Richmond, and over the bridge which carries that road over the petitioners' railway near the said station, and the petitioners, therefore, are only entitled to be heard (if at all) with regard to the said tramway No. 3, in the manner and within the limits prescribed by S. O. 135, and not further, or otherwise, or generally against the bill; (3) the streets or road referred to in the petition are not the property or under the control of the petitioners, who have no right to be heard as to any interference or possible interference therewith, being represented as to all such matters by the local or other authority duly constituted to protect the streets and highways within the district; (4) save in the manner and to the extent aforesaid, the petitioners are not entitled to be heard, and have no such interest in the bill as entitles them to be heard consistently with practice.

Clerk, Q.C. (for petitioners): No. 3 of the proposed tramways is to be constructed in the road in front of our St. Margaret's station, near Twickenham and Richmond, and over the bridge

which carries that road past the station. We allege that the roadway in front of our station and over the railway bridge is very narrow and steep, and forms the sole means of ingress and egress to and from the station, and that the construction and working of the proposed tramway would cause serious obstruction, danger, and inconvenience to the railway traffic. We also allege that the roadways along which the proposed tramways will run are narrow and ill-adapted for the formation of tramways. As to the bridge we are bound to maintain it.

Mr. RICKARDS: You are in fact the road authority over the bridge?

Clerk: Yes; and it forms the access to our station. The promoters seek to limit our *locus standi* to the mere question of frontage. But in the *King's Cross and City Tramways Bill* (2 Clifford & Rickards, 106), in which the nature of a frontager's opposition was considered, the Court held that a frontager's objections were not necessarily confined to the obstruction which might occur in front of his own house. As owners of the lands forming the approaches to the bridge, we are in the position of landowners, and are entitled to a larger right of opposition than would belong to a railway company complaining merely of interference with their property as frontagers.

Mr. RICKARDS: I take it that if you have a *locus standi* against the tramway, it follows that you may be heard with regard to any injury which may be done to you by it.

Pembroke Stephens (for promoters): We concede the right of the petitioners to be heard as frontagers in respect of their station. As to the more extended right which they claim, I am told that the road over the railway bridge is vested in the road authorities, who are the proper persons to object to interference.

Clerk: We built the bridge and we maintain it; it is not vested in the road authorities.

Stephens: At the utmost they can only be heard against tramway No. 3, which crosses the bridge; not against the line as a whole.

Locus standi Allowed, under S. O. 135, against so much of the bill as relates to tramway No. 3.

Agents for Petitioners, Bircham & Co.

Petition of (2) BENJAMIN BRADFORD REED and FRANCIS T. BIRCHAM.

Tramways, not Fronting Premises — Street — Road — Frontagers in, Within Meaning of S.O. 135 and 18 — Practice.

In the S. O. conferring a *locus standi* upon petitioners who allege that their premises will be injuriously affected by a proposed tramway, the word "frontagers" does not occur. In a case, therefore, where the tramway would not run in front of certain premises, but would terminate "at a point in the road, opposite the west flank wall of the stables," attached to the house:

Held, that (without reference to the term "frontagers") petitioners urging that the access to their premises would, under these circumstances, be injuriously affected, were entitled to a *locus standi* within the meaning of the S. O.

The *locus standi* of Benjamin Bradford Reed and Francis Thomas Bircham was objected to, because (1) no land, property, right, or interest of the petitioners will or can be taken under the bill; (2) the petitioners allege themselves to be, as trustees under the marriage settlement of Rosa Matthews, the owners of a freehold mansion at Twickenham, known as Spring-lodge, and state that the intended tramways 3 and 3½ will terminate at a point in the road opposite the west flank wall of the stables attached to the said house. But the petition does not go on to say that they are the sole trustees of the marriage settlement, or that all the trustees have signed the petition, or that they are acting on behalf of, or by request or direction of the said Rosa Matthews, or her husband, and for all that appears to the contrary from the petition, the said Rosa Matthews and her husband and all the other parties (if any) interested in or occupying Spring-lodge, might be assenting parties to the bill; (3) the petitioners respectively describe themselves as of the Knoll, Red Hill, in the County of Surrey, and of No. 46, Parliament-street, in the city of Westminster, and accordingly fail to show that they have any residential or other connection with, or interest in, the district served by the intended tramways; (4) the streets or roads referred to in the petition are not the property or under the control of the petitioners, who have no right to be heard as to any interference or possible interference therewith, being represented as to all such matters by the local or other authority, duly constituted to protect the streets and highways within the district or districts served by the tramways; (5) the petitioners are not entitled to be heard upon any grounds stated in their petition, nor have they any such interest as entitles them to be heard consistently with

practice; (6) the petition is not signed in conformity with the rules of the House of Commons.

Clerk, Q.O. (for petitioners): The petitioners are trustees under the marriage settlement of Rosa Matthews, and as such are the owners of a freehold mansion called Spring-lodge, situate at Twickenham; and it appears on reference to the plans deposited in respect of the said bill that the tramways Nos. 3 and 3B are to be constructed so as to terminate at a point in the roadway opposite, and in a line with the west flank wall of the stables attached to Spring-lodge, from which roadway the entrance to and exit from Spring lodge is obtained. We say that, under these circumstances, the formation and working of the intended tramways would be most detrimental to our interests, and that the value of Spring-lodge would be much decreased, and its enjoyment as a place of residence injuriously affected. We are frontagers.

Stephens (for promoters): That we dispute.

Clerk: True, the tramway does not come actually in front of the carriage entrance into our property, but it covers the end wall of our premises.

Mr. FORSYTH: By the plan it appears that it just stops at the wall.

Clerk: The description in the bill is "and terminate at a point opposite and in line with the west wall of the stables of Spring-lodge, on the north side of the road near Richmond-bridge." There is no definition of what a frontage is. Practically the Court has held a frontager to be a person whose premises are so situated with regard to the proposed tramway that they will be affected by it.

Mr. RICKARDS: That is rather wide. The obvious meaning of the word "frontager" is a person whose premises face that part of the road on which the tramway is to be laid.

Mr. FORSYTH: Suppose this tramway stopped twenty yards west of the wall, you would not say then that the petitioners were frontagers?

Clerk: No. Of course there must be a limit. Supposing the tramway terminated twenty yards off, I should not say that we were frontagers, but supposing the tramway came ten feet in front of my premises I should contend that I was a frontager. Here it comes opposite to our west wall, and I contend that we are frontagers. As the tramway will be made up to a point opposite to and in a line with the west wall of our stables, the horses which are drawing the tramcar will be standing ten feet or more in front of our premises, and so will be a projecting part of the car itself.

Mr. RICKARDS: A frontager must be a frontager to the tramway and not to the car or the horses.

Clerk: Then that brings me to my wall. The tramway is to terminate in a line with my wall, and to that extent I am a frontager. They may construct the tramway within two feet of my wall.

The CHAIRMAN: One of the Referees has pointed out that the word "frontager" does not occur in the S. O.

Clerk: That is so. The promoters object that the petition does not say that we are the sole trustees of the marriage settlement, or that all the trustees have signed the petition, or that we are acting on behalf or by the request or direction of Mrs. Matthews or her husband.

The CHAIRMAN: Mr. Stephens probably will not press that or other objections having reference only to the form of the petition?

Stephens: No. I shall not rely upon those grounds.

Mr. RICKARDS: This is not a street, but we must take street to include a road, I suppose?

Stephens: I shall contend that the S. O. applies to a street only.

Clerk: The promoters have not raised the objection that this is a road and not a street. Indeed, they treat a road and a street as the same thing in their objections. This road is on the Middlesex side of the Richmond-bridge where there are a succession of villas one after the other. For the convenient occupation of a villa of this kind an entrance might be made at any part of the premises; an entrance might be made where our stables are.

Stephens (in reply): The term "frontager" has a meaning which is well understood, though it may not be technically accurate, and the word itself occurs in the marginal note to S. O. 13. The idea which the term conveys, or with which it is associated in the public mind, dates back to the time when, in consequence of representations made by Messrs. Shoolbred and others, as to the impossibility of carrying on business if fixed lines of rails were laid down and constantly used in front of their premises, a S. O. was passed, which had not previously existed, giving to owners or occupiers of houses, shops, or warehouses in any street "through" which it was proposed to construct a tramway, a right to be heard upon allegations that they would be injuriously affected in the use or enjoyment of their premises, or in the conduct of their trade or business. That is not the case here. The petitioners do not front or abut upon any line of rails; they have no trade or business; and as they are non-resident they cannot well be affected in the use or enjoyment of the premises. Accordingly they are not frontagers, in any sense of the term.

The CHAIRMAN (after deliberation): We will

not use the word "frontagers" in this case, but we consider the petitioners to be owners or occupiers of a house within the meaning of S. O. 135, and we therefore *Allow* their *locus standi*.

Agents for Petitioners, *Bircham & Co.*

Petition of (3) FRONTAGERS IN STREETS AND ROADS ALONG WHICH THE PROPOSED TRAMWAYS WILL BE LAID, AND OTHERS.

Tramways—Persons Joining in Frontagers' Petition, not being such—Streets and Roads—Alleged Injury to, by Tramway—Petitioners Complaining of—Representation of, by Road Authorities—District, Adequate Representation of, by Petitioning Inhabitants—Evidence as to—S. O. 134 (Inhabitants of District Injuri-ously Affected)—S. O. 135 (Frontagers in Tramway Cases)—Tramway, Alleged to be Unnecessary—Gradients, Steepness of, in Tramway—Allegations under S. O. 134, Sufficiency of.

A petition against a tramway bill was presented by 67 persons, residing at Isleworth and Twickenham, of whom about one-half were frontagers along the line of the proposed tramway. Besides complaining of obstruction to traffic, the petitioners sought to be heard on the ground, not however alleged in terms in their petition, that the districts of Isleworth and Twickenham would be injuriously affected by the construction of the tramway, and they claimed, under S. O. 134, a general *locus standi* as inhabitants of such district. The promoters disputed the right of the petitioners to represent the district, on the ground that they did not constitute a sufficient proportion either of inhabitants or rateable property within their respective districts. Evidence being taken upon this point :

Held, that only such of the petitioners as were frontagers could be heard against the bill, and this only to the extent allowed under S.O. 135.

The petition was that of frontagers, being owners, lessees and occupiers of land, houses, shops and other premises in streets and roads through which the proposed tramways are in-

tended to be constructed, and of other owners, lessees and occupiers of lands and premises in, and inhabitants of, Isleworth and Twickenham. The petition was signed by 67 persons, of whom it was admitted that 31 were frontagers, and the petitioners claimed to be heard, not only under S. O. 135, as frontagers, but under S. O. 134, as inhabitants of a district which would be injuriously affected by the bill. The local authorities of Isleworth and Twickenham respectively did not petition.

The *locus standi* of the petitioners was objected to, because (1) no land, property, right, or interest of theirs will or can be taken under the bill; (2) they admit that some only of their number are frontagers. As to such, accordingly, of the petitioners as are not frontagers, they have no *locus standi* upon their own showing, and cannot be heard according to practice; (3) as regards such of the petitioners (if any) as are *bona fide* frontagers, they are only entitled to be heard in the manner and within the limits prescribed by S. O. 135, and not further or otherwise or generally against the bill; (4) the streets or roads referred to in the petition are not the property or under the control of the petitioners, who have no right to be heard as to any interference or possible interference therewith, being represented as to all such matters by the local or other authority duly constituted to protect the streets and highways within the district; (5) none of the following petitioners are owners or occupiers of any shop, house or warehouse in any road or street through which it is proposed under the bill to construct any tramway [*List given*]; (6) the total number of persons signing the petition, if all of them were entitled to be heard as frontagers or in any other capacity, would be inadequate to entitle them to a hearing as representing the district, even if they were not represented by the local authorities of the district or districts respectively which will be served by the intended tramways; (7) the petitioners are not entitled upon any grounds stated in their petition, nor have they any such interest in the subject matter of the bill as entitles them to be heard consistently with practice.

Ledgard (for petitioners): Inhabitants have been allowed to be heard in like cases where the local authorities have also appeared, or where the local authority for some reason has not chosen to appear. (*Isle of Wight, Cowes, and Newport Junction Bill*, 2, Clifford & Stephens, 210.) Here the local authority of Isleworth have consented to the bill, and the local authority of Twickenham, though they have not consented, do not petition; and therefore, if these petitioners are not heard under S. O. 134, there will be no

opportunity of presenting the public case against the bill. As regards the question whether the petitioners may be taken substantially to represent the inhabitants of the district, the petition is signed by 67 persons who live in the district of Twickenham and Isleworth, mainly in Twickenham. Tramway No. 3 runs for a mile and a quarter along and in front of property of a very valuable character, and the 67 petitioners are gentlemen owning such property in the district affected. It is not a question of numbers; it is a question of rateable value; and the gentlemen signing the petition represent very important interests in respect of rateable value and position.

Mr. RICKARDS: In the case you have just cited, one member of the Court said: "The *locus standi* of a corporation entirely depends on the S. O. and requires an allegation not in precise terms, but in effect that the town will suffer in its interests." Is there anything like that in your petition?

Ledgard: Yes; we say "your petitioners altogether deny the truth of the preamble, so far as it alleges that the construction of the tramways would be of local or public advantage, and contend that there would be no advantage, local or otherwise, at all commensurate with the injury that would be inflicted upon your petitioners and other private interests, and further deny that the proposed tramways can be so constructed as not to impede or injure the ordinary traffic of the roads." The railway accommodation of the district proposed to be served is such as to render the proposed tramway unnecessary. The population of the district is comparatively small, and is mostly of a class not likely to be benefited by, or make use of the tramways if constructed. Again, the roads which they would traverse are in many places narrow and unsuitable for tramways, and in such places the space between the outer rail and the curb will be so narrow as to create considerable danger to the ordinary traffic. Danger will also arise from the steep gradients and from other engineering defects in the scheme. Many of the petitioners and others of the general public using their own conveyances would, they allege, be deprived of the use of the roads if these tramways were laid, and would be compelled to take circuitous routes in order to avoid the danger and inconvenience to which they would otherwise be exposed. By this means injury would accrue to the trade of those of the petitioners whose shops abut upon the lines of tramway by the diversion of the better class of customers. The value of the petitioners' property, and of other property in the district, would, they say, be greatly depre-

ciated, and as a natural sequence their proportion of rates and taxes would be increased. There is no public necessity to justify the interference with our private interests. Even if the tramways should ever be constructed and opened there is not sufficient traffic to render the undertaking remunerative, and the works and plants would gradually fall into disrepair and become in fact a public nuisance. As to the local board being the proper body to represent the public, inhabitants are not to be shut out merely because the local authority do not oppose the bill. Very often the local authority cannot get a sufficient number of inhabitants to guarantee the borough funds against loss, and in cases of that kind inhabitants have been heard. The local board might represent the district with regard to the roads, but they could not represent the district with regard to the question of apprehended injury to private interests and of increased rates by reason of the depreciation in the value of property by the making of the tramway. (*County Down and Belfast Borough Bill*, 1 Clifford & Stephens, 130; *Sligo, Leitrim, &c., Railway Bill*, 1 Clifford & Rickards, 186.)

The CHAIRMAN: What is the population of Isleworth and Twickenham?

Stephens (for promoters): Of Isleworth, 11,498, and of Twickenham, 10,533.

The CHAIRMAN: Can you give us the number of rateable houses in the district, and the rateable value of the property represented by the petitioners?

Ledgard: If there is any doubt about the petitioners fairly representing the inhabitants, I will call evidence.

The CHAIRMAN (to Stephens): Assuming that the inhabitants generally would have a right to be heard, shall you contend that in this case there are not a sufficient number of them signing the petition?

Stephens: That will be one of my points.

The CHAIRMAN: Then it will be necessary for Mr. Ledgard to call evidence. We wish to confine the inquiry to this point—do these petitioners represent the inhabitants of the district.

[Witnesses were then called upon this point.]

Mr. RICKARDS (to witness): Do you think the petitioners represent, we will say, half the rateable value of Twickenham?

A.: Certainly not half the rateable value of Twickenham. Twickenham is an enormous parish. We are only at one end—quite on the outside of the district.

Q.: Is it only those who are near to the line of tramway who have signed?

A.: The others have not been asked. The petition is signed by the large majority in our

part of the district. The rest of Twickenham has nothing to do with it.

The CHAIRMAN: You mean that the greater proportion of those near the line of tramway have signed it?

A.: Yes.

Mr. RICKARDS: You mean it is only that portion of the people of Twickenham who will be affected by it?

A.: Yes; I should say so. It is a misnomer to call it a Twickenham tramway at all; it runs to Richmond-bridge a long way from the middle of Twickenham itself.

Ledgard: It is not only the houses fronting the tram road which would be affected, but the petition goes against interference with so much of the road as the tramway runs along?

A.: Yes; the road is so narrow that it would be impossible with safety for anyone to travel along it.

Q.: Your objection to the bill is not merely that the occupiers of houses abutting on the line of tramway would be affected, but that the general public using the road for a mile and a quarter will not have the same use of it as heretofore?

A.: Yes.

Q.: Does the petition represent a very large section of owners of property in Twickenham and Isleworth?

A.: Certainly.

Q.: You might have got a great many more if you had wanted?

A.: If we only had had time. The S. O. were not complied with till the last moment. I could have got any number of signatures.

Mr. FORSYTH: Do most of the persons who sign the petition reside near or on the line of tramway?

A.: Most of them. We had not time to go all over the parish. There are thirty who do not live on the road. The population is 11,000, but a large majority of the population are not affected really. The parish reaches away to Teddington.

Cross-examined by Mr. Stephens.

Q.: There is no pretence for saying that as regards Isleworth as a whole or Twickenham as a whole, the tramway is an injury?

A.: Except as far as the inhabitants use the road. They do use the road and in that way it will affect them.

Q.: There is no injury except to the particular group of persons who happen to be interested in this one road?

A.: That is so, no doubt; and that includes the whole of the inhabitants.

Q.: You cannot give me the total valuation of either Isleworth or Twickenham, and the total valuation of these petitioners?

A.: No.

Mr. FORSYTH: Do you think these petitioners represent a twentieth of the rateable value?

A.: I cannot tell.

Q.: Can you give an idea of the general rateable value of the property along the line—that is to say, the property of the frontagers on each side—and show the proportion these petitioners bear to the whole?

A.: The tramway runs through part of the village of Isleworth, and I have no idea of the rateable value of the little shops there. I could tell the value of the houses in our district for a mile and a quarter. I should say we had the enormous majority of the rateable value.

Q.: Would you say three-fourths—that is to say, taking the frontages for a mile and a quarter, excluding the town of Isleworth?

A.: I should say considerably more than half.

Stephens (in reply): With regard to these owners, lessees, and occupiers, I submit that none can be heard except those who are frontagers. Apart from the objection in respect of the insufficiency of the allegations in their petition, the petitioners are not entitled to represent the public; the allegations are not so framed as to let them in, and according to the dictum in the *Isle of Wight and Cowes Junction Bill*, even local bodies must come with an allegation that the town or district will suffer in its interests. That was a very different case from this. There, the magistrates, merchants, and others, complained that the proposed line, crossing the Medina by a fixed bridge having a 40 ft. span and only a 16 ft. headway, would seriously affect the navigation and prevent shipping from reaching the quay, thereby affecting the trade of the town. Here, no injury to trade is alleged. Where private individuals come forward claiming to represent the public, they should show that they do represent the public, and that for some reason or other, the local authority, who might have petitioned if they had thought proper to do so, are out of the way. Here, the local authority are either tacitly supporting, or actively supporting, the bill.

Ledgard: I am prepared to prove that the Twickenham local board are not in favour of the bill.

Stephens: However, they have not petitioned against it.

The CHAIRMAN: They are not here; we know nothing about them.

Stephens: You have a group of persons (respectable and influential I admit) living on the road, or near the road along which the tramway is proposed to be laid—the road being at one extremity of the district which stretches away for miles—claiming to be heard as repre-

senting the district. It is impossible to read S. O. 134 as applicable to the case of these gentlemen; and there is nothing in the petition alleging that the effect of the bill will be to affect the town or district injuriously. The S. O. gives a discretion to the Referees to admit petitioners, being the municipal or other authority; but it is clear from those words that the case contemplated is injury to the town or district, and not a private injury. The S. O. goes on to say that it shall be competent to the Referees to admit inhabitants to be heard where they allege that the district will be injuriously affected. That must be when the inhabitants come in a body, in a sufficient number, to complain of some distinct and tangible injury to the district. This petition from first to last is a petition of individuals complaining of private injury to themselves, and other individuals similarly situated. If they had said that the districts of Twickenham and Isleworth would be injuriously affected by the provisions of the bill, and, as inhabitants, they objected thereto, that would have raised the public question; but there is nothing to warrant the Court in laying down what will be cited as a precedent that this is such a representation of the district as entitles the petitioners to be heard under S. O. 134. With regard to their case as individuals, in addition to the 30 whom we have already admitted, we admit that six others are frontagers, making 36 out of the 67 signing the petition. As regards any of the petitioners to whom S. O. 135 (which must be read in connection with S. O. 6 and 13) applies, I concede that they are entitled to be heard to the full extent intended by that S. O. In the *King's Cross and City Tramway* case you gave a decision in the terms of the S. O. itself. I ask you to give a similar decision in this case.

The CHAIRMAN (after deliberation): The *locus standi* of such of the petitioners as are owners and occupiers in streets and roads along which the proposed tramways will be laid is *Allowed* under S. O. 135.

Agents for Petitioners, *Wyatt, Hoskins, & Hooker*.

Agent for Bill, *West*.

CARDIFF CORPORATION BILL.

Petition of The GUARDIANS OF THE POOR OF THE CARDIFF UNION AND OTHERS.

27th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Water Supply—Transfer from Company to Corporation—Poor Law Guardians—Sanitary Authority—District of, Larger than Borough Limits—Apprehended Preference of Municipal to Extra-urban Inhabitants—Owners Outside Borough—Differential Rates, Clause Authorising—Maximum Rate Unaltered—Waterworks Clauses Act, 1847—Practice—Allegations of Petition—How far Specific—Doubted, but admitted by the Court.

The bill authorised the transfer of the Cardiff waterworks from a company to the municipal corporation, the area of supply extending beyond the limits of the borough. The petitioners were the poor law guardians and sanitary authority of the Cardiff union, whose jurisdiction covered the outside district to be supplied by the corporation. The petition was also signed by several owners outside the borough boundary but within the area of supply. They complained that they would be at an obvious disadvantage with the inhabitants of the borough itself, who would be dealt with on easier terms than those outside the borough limits; and in support of this view they referred to a clause in the bill empowering the promoters to vary the rates charged within and without the borough limits. The promoters contended that the maximum rate was unaltered by the bill, and that the maximum was now maintained throughout the whole district by the existing company; they also pointed out that the usual restrictive provisions of the Waterworks Clauses Act were embodied in the bill:

Held, however, that, inasmuch as there was a special clause in the bill enabling the promoters to charge differential rates within and without the borough limits, the petitioners' interests were sufficiently affected to entitle them to a *locus standi*.

A preliminary objection was taken to the petition on the ground of the insufficiently specific character of its allegations. The petitioners alleged generally their claim to a supply of water "upon reasonable terms," and their apprehension that their interests would be sacrificed to those of the inhabitants within the limits of the borough, but did not specifically allege the proposal to establish "differential rates." The Court, however, after expressing some doubt as to the sufficiency of the petition, disallowed the objection of the promoters.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2, 3 and 4) as to the petitioners, other than the guardians, the petition does not disclose what they are or what interest they have in the bill, or whom they represent; nor does their petition emanate from any public meeting, or in any way entitle them to be heard against the bill; (5) the petition does not allege, nor is it the fact, that the petitioners are injuriously affected by the bill; (6) the allegations of the petition only disclose an apprehension that the supply of water given by the corporation may be inferior to that given by the company; but the bill in no way affects the rights of the petitioners, as they now exist, to demand a supply of water, as the bill provides that the enactments of the Waterworks Clauses Act, 1847, in that behalf, now applicable to the company, shall continue applicable to the promoters after the transfer to them of the waterworks undertaking; (7) the petitioners do not allege any ground entitling them to be heard according to practice.

Clerk, Q.C. (for petitioners): The petitioners are the rural sanitary authority for the district comprised in the Cardiff poor law union, and divers owners of property at Cardiff and in the parish of Llandaff. Our district includes the city of Llandaff, so much of the parish of Llandaff as is not within the limits of the borough of Cardiff, and the parish of Whitechurch, and it is our duty as the sanitary authority to supply water in our district. The bill is one to transfer the water supply of the district from the present company to the corporation of Cardiff. Our district, generally, has been badly supplied with water, but the Cardiff Waterworks Act of 1878 empowered the company to construct additional works of considerable extent, and if the powers of that Act were carried out by the company, we believe

that the supply of our district generally would be completely satisfactory. The corporation of Cardiff, however, if they obtain possession of the company's undertaking, as proposed by the bill, will of course have mainly in view the convenience and interests of the inhabitants of their own borough to the neglect of those of our district outside the borough limits, and we, therefore, claim the insertion of clauses providing for a proper supply of our district generally, and the charging of equal rates throughout the whole area of supply. It is true that area will be the same as is now supplied by the company, and the corporation will be equally liable to all the provisions of the General Waterworks Act, but there is nothing to prevent the corporation from charging a different rate inside or outside their borough limits. I refer to the *Birmingham Water Bill*, on the *Petition of the Local Boards of Aston and Handsworth* (1 Clifford & Rickards, 143).

Michael, Q.C. (for promoters): The status of the petitioners is unaltered by the bill, as the corporation will stand in the same position as the company do now, and with the same liabilities.

The CHAIRMAN: The argument is that you may make differential rates.

Michael: There is nothing in the petition to raise that point.

Mr. FORSYTH: The petition says "the comfort, health, and other interests of the inhabitants of the said several places will be greatly prejudiced and possibly wholly sacrificed to the paramount influence of the inhabitants of the borough." That of course would be by a less supply or by a heavier charge.

Michael: That is not a sufficiently specific allegation. No one would infer from that that a differential rate was meant. In the *Birmingham Water Bill* the great distinction was that there was no limit whatever as to price, whereas we are limited by the Cardiff Waterworks Act, 1853, to a certain maximum, and the bill contains no power to alter that maximum.

Mr. RICKARDS: Does the Company's Act of 1853 contain anything like sub-section 3 of clause 7 of the bill: "The charge for water supplied within and without the limits of the borough need not be made according to the same scale, but may be varied from time to time by the corporation so long as they never exceed the maximum price fixed by the Water Acts," as that seems to hint at a differential rate?

Michael: No; but it gives no greater power than now exists. There is at the present time no compulsion upon the company to charge the same rate over all the district.

Mr. RICKARDS: But the petitioners say that the company might be supposed to act impar-

tially, whereas the corporation would be actuated by natural love and affection towards their own inhabitants?

Michael: The same arguments were used, and the same circumstances existed in the *Cheltenham Corporation Water Bill* (2 Clifford & Rickards, 84), where a *locus standi* was refused.

The CHAIRMAN: There was no such clause in that bill as sub-section 3 of clause 7 in this bill. That sub-section must have been inserted for some purpose, and that sub-section is stated to be an exception from the Water Act.

Michael: At any rate the petition does not raise that question.

The CHAIRMAN (to petitioners' counsel): Have you anything to add as to the sufficiency of the allegations in your petition on this point?

Clerk: We allege that we ought to be secured a sufficient supply of water on reasonable terms, and that we are apprehensive of being sacrificed to the interests of the borough; and our petition must, of course, be read with the bill.

The CHAIRMAN (after deliberation): Though we had some doubt whether the petition sufficiently raised the question with regard to differential rates, on the whole we think it does sufficiently raise it, and we have come to the conclusion to Allow the *locus standi* of the Petitioners.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Sherwood & Co.*

CRYSTAL PALACE DISTRICT GAS BILL.

Petition of The METROPOLITAN BOARD OF WORKS.

21st April, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH, and Mr. BONHAM-CARTER.)

Gas Company—Power to Manufacture and Provide Engines to be Worked by Gas—Metropolitan Board of Works, as Representatives of Consumers—S. O. 134 (as to District Injuriously Affected)—District of Supply Partly Within Metropolitan Area—Possible Postponement of Reduction in Price of Gas—No Increase of Capital, or Alteration in Price, or Standard of Purity—Fresh Application of Authorised Capital—Ultra Vires—Metropolis Gas Act, 1860—London Gas Act, 1868.

The bill authorised the company to manufacture and sell to their customers within

their district all kinds of engines and apparatus, for domestic and other purposes, which could be worked by means of gas. The promoters were not under the regulations of the London Gas Acts, or subject to a sliding-scale of rates, but were bound to reduce the price of gas after the declaration of a 10 per cent. dividend upon their shares. Their district was partly within the area of the metropolis, and the Board of works claimed to be heard as representing gas consumers within the metropolis, whose interests might be injuriously affected by the postponement of a reduction in the price of gas owing to the fresh purposes to which the capital of the company was proposed to be applied. The bill also contained powers to enable the promoters to supply engines for the production of light and heat by electricity, where such machinery was worked by gas; but on this point the promoters conceded the petitioners' right to be heard. On the general question of *locus standi*, the promoters pointed out that the bill proposed no increase in their capital, or in the price of gas, or alteration in the standard of purity of the gas supplied:

Held, however, that the bill involved such a new application of the authorised capital of the company, as might result in a postponement in the reduction of price to the consumers, and that the petitioners were accordingly entitled to be heard to protect the interests of consumers.

The *locus standi* of the petitioners was objected to, because (1) they do not allege, nor is it the fact, that the metropolis, of which they have the local management, or its inhabitants, will be injuriously affected by the bill, and even were it otherwise, the petition does not specify the respects in which it or the petitioners will be injuriously affected; (2) although a portion of the promoters' district is within the metropolis, yet the promoters and their undertaking are expressly excluded from the operation of the Metropolis Gas Act of 1860, and the London Gas Act of 1868, and the petitioners have not any such interest, jurisdiction, or authority in respect of the promoters' undertaking, or the matters dealt with by the bill as entitles them

to be heard; (3) the petition does not allege, nor is it the fact, that the petitioners, or their constituents, are injuriously affected by any provision of the bill; (4) the powers sought by the bill do not in any way alter or diminish the present obligations or liabilities of the promoters with reference to their consumers, or affect the rights of those consumers, or extend the present powers of the promoters, or confer upon them any new powers with respect to any matter as regards which the petitioners have any jurisdiction within the promoters' district; (5) the petitioners have no such interest in the matters referred to in the petition as entitles them to be heard against the bill, even if the statements contained therein were true, which the promoters deny.

Cripps, Q.C. (for petitioners): Section 2 of the bill provides:—

“The company may provide, manufacture, buy, hire, and may supply, sell, or let, to consumers of gas within their district or limits, burners, tubes, and stoves or ranges, for heating or cooking by means of gas, and any other materials or fittings for the use of gas for domestic or other purposes; and also engines and machines for domestic, agricultural, manufacturing, industrial, or any other purposes whatever, to be worked by means of gas for the production of motive power, and any materials or fittings to be used in connection therewith. The company may also provide, manufacture, buy or hire, and may supply, sell, or let, to persons to whom they supply, sell, or let any gas engines or machines such as are above-mentioned, or as are required for any of the purposes of this section, or to any of their consumers of gas, any apparatus, meters, materials, or fittings necessary or proper to be used in connection with, or for, the purposes of the production, conducting, or supplying of light, heat, or power, by means of electricity, or magnetism, or any other means, produced or supplied by (or by the use of) any such gas engines or machines as are above-mentioned, and may acquire licenses (but not exclusive rights) to use, patent, or other rights, for any of the purposes mentioned in this section.”

This section involves a consumers' question. The company is not under the sliding-scale at present, but under provisions which limit them to a 10 per cent. dividend, after which all profits go in reduction of the price of gas; therefore, anything which extends their capital, or extends the purposes to which their capital already authorised may be applied, may have the effect of prolonging the period at which the price of gas will be reduced. The extension of the application of their capital to the purposes above enumerated will defer the period of the reduction of the price of gas, and we claim the right which we undoubtedly possess of watching over the consumers' interests

before the Committee upon this bill. That right has been conceded to us since 1860 and downwards, and in 1862 S. O. 134 was altered expressly to sanction the admission of the Metropolitan board of works in cases in which their district was interested. The petitioners' district lies partly within and partly without the metropolitan area. The first case where this circumstance also occurred was that of the *Wandsworth Gas Bill*, before a House of Lords' Committee, where we were allowed a *locus standi*. In 1873 we were allowed a *locus standi* against this very company for the same reason as we allege now. (*Crystal Palace Gas Bill*, 1 Clifford & Rickards, 8.)

Mr. RICKARDS: As it is uncertain whether a new application of capital would turn out to be a profit or loss, your argument would result in your claiming to be heard against every gas bill affecting a company within the metropolitan area?

Cripps: At any rate, every bill which increased the power of the company to do something with capital, which they could not do at present.

The CHAIRMAN: You say this bill enables the existing company to enter upon an entirely new line of business, and for that purpose they may employ capital at present authorised, but not employed; and you say there may be a loss upon this new undertaking which they seek power from Parliament to carry on?

Cripps: Yes, it may have that effect, and so postpone the benefits to which the consumers are entitled. That is sufficient to give us a right to appear.

Jeune (for promoters): The power to supply light by means of electricity will be struck out of the bill, and the Metropolitan board of works may, if they please, have a *locus standi* on that point. The question is whether, when a gas company asks Parliament for no new power to raise capital, or to alter the price of gas, or the standard of purity, but only to do something subsidiary to their main purpose as a gas company, the representatives of the consumers are entitled to be heard.

Mr. RICKARDS: You come for those powers to supply engines and apparatus in order to avoid any *ultra vires* objection?

Jeune: Yes; and if we came under the Gas Acts of 1860 and 1868, it might be that the Metropolitan board would have a right to be heard, but as we are excluded from the operation of those Acts, they are not entitled to be heard, either on principle or according to the decided cases. There have been, in the course of the last three years, no less than 61 cases in which gas companies have applied for similar powers to those we are now seeking. Why

should we not supply cooking ranges as well as meters? The mere fact that this new method of supply may indirectly affect the price of gas to consumers does not give their representatives a right to be heard. My argument is borne out by the following cases:—*Sutton Gas Bill* (1 Clifford & Rickards, 267); *Wigan Improvement Bill* (Ib. 124); *Castleford and Whitwood Gas Bill* (Ib., vol. 2, 78); *Newport (Monmouthshire) Gas Bill* (Ib. 49); *Farnworth and Kearsley Gas Bill* (Ib. 91). Those cases show that unless some direct effect is produced on the price or quality of gas, the consumers have no right to appear.

The CHAIRMAN: You are proposing to become dealers in all manner of things which have nothing to do with gas; you are proposing to supply such things as cooking ranges.

Jeune: Only such things as are subsidiary to the use of gas; not to carry on a different business. The supply of the physical means by which gas is consumed comes very near to the supply of gas itself.

The CHAIRMAN (after deliberation): The Referees have decided to *Allow the locus standi* of the Petitioners.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

EDINBURGH MUNICIPAL AND POLICE BILL.

Petition (1) of JOHN HOPE.

24th and 26th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Sewerage and Drainage Scheme—Sanitary Authority—Repeal of Existing Laws—Amalgamation of Separate Sanitary Districts—General Rate—Landowner Injuriouly Affected—Deterioration in Value of Property—Additional Taxation—Contribution to General Rates—Sanitary Provisions—Right of Appeal Interfered with—Roads—Arrangements between Petitioner and Neighbouring Owners of Property—Easement—Practice—Representation—Ratepayers and Inhabitants—Town Council—Petitioner, how far Represented by—Special Injury.

The magistrates and town council, in their capacity as the governing body of Edinburgh, promoted a bill for re-arranging the sanitary condition of the burgh, repealing

the existing Acts, and consolidating all the various smaller districts, which had hitherto been separately administered, into one general district, with a uniform rate for drainage and sewerage purposes. They also took power to dictate to private owners of building property the laying out of streets and roads. The petitioner was the owner of considerable property within the burgh, and he complained that, although none of his property would actually be taken under the powers of the bill, the effect would be that additional taxation would be imposed upon it, and its value accordingly depreciated. He had already built numerous houses, and had, in their construction, complied with the existing laws in all sanitary matters, and he objected to being placed under fresh regulations as to this portion of his property, the effect of which would be to compel him to contribute to a uniform rate for the benefit of the entire district within the limits of the bill. He also objected to a provision of the bill, by which the promoters were made the sole judges of the sanitary measures to be adopted by private owners, and an existing right of appeal to the sheriff was abolished. He further complained that the bill interfered with an arrangement which had long existed between himself and the governors of a hospital, whose property adjoined his own, as to the laying out of roads on the respective properties. It was generally objected that his case was that of all other landowners within the district, and that he was more especially precluded from appearing to oppose the bill inasmuch as he was himself a member of the town council, who were promoting it:

Held, however, that he was not to be prevented on this ground from showing the injury apprehended to his property, and that he was entitled to a *locus standi* against the several portions of the bill to which the grounds of complaint embodied in his petition related.

The *locus standi* of John Hope was objected to, because (1) he cannot as an individual repre-

sent the whole or any class of ratepayers or inhabitants of Edinburgh, the whole of whom are represented by the promoters as the governing body of the city, of which body the petitioner himself is a member as a town councillor; (2) although the petitioner is an owner of lands and heritages within the burgh, his case is not different from that of other owners, and he does not aver any special injury to, or interference with his rights; (3) the promoters who represent him have no antagonistic interests in any matter embraced in the bill, and he has no special or peculiar interest from the general body of inhabitants; (4) the alleged relations betwixt the petitioner and the governors of Heriot's hospital (erroneously represented as identical with the promoters) will not be affected by the bill otherwise than as ordinary owners of property would be affected; (5) the statements in the petition (even if true) do not confer a *locus standi* on the petitioner according to practice.

Pembroke Stephens (for petitioner): The bill is of a very wide and sweeping character. It consists of 404 clauses and 6 schedules, and is divided into 27 parts. It proposes to repeal 16 Acts and a Provisional Order, and to attach special meanings to 30 or 40 words of common occurrence, differing in many cases from the interpretations given in the existing Acts. Accordingly the bill affects materially the conditions under which property is held and enjoyed in Edinburgh. This is not, as the objections suggest, the case of a single ratepayer. Mr. Hope is the owner of considerable property within the burgh of Edinburgh, some of which is already built over and some of which is in process of being covered. He has been at great expense in laying out roads and streets in connection with this property, and also in draining all the houses upon it. He has been careful to comply with all the provisions of the Acts now in force, and reasonably regarded himself as free from further liability with regard to these houses. The present bill, however, repeals all the existing Acts as to drainage in Edinburgh, and comprehends in one general drainage district the numerous small districts into which the city is now divided. Inasmuch as there are special provisions in force in each district, the change subjects owners like Mr. Hope, having property in more than one district, to what are virtually new laws in each case. Although the maximum rate imposed over the city may be no higher under the bill than the aggregate of the smaller rates at present, by the fact of its imposing an equal rate throughout the whole limits, the well-drained districts will be compelled to pay for the undrained districts. In other words, as to some

of the parts of our property most favourably placed as regards drainage, we shall be compelled to pay a higher rate than we did before District A lying nearer the sea, which has complied with all the existing laws as to drainage, will be compelled in this way to pay for drainage improvement in districts B, C and D, lying further from the sea, and where little or nothing has been done; it may happen that all our property lies in district A, and none, or very little, in the other districts.

Mr. RICKARDS: Do you contend that houses already drained are exempt from the jurisdiction of the corporation—that they have no power to order improvements, and carry them out?

Stephens: At present each drainage district has its own conditions. We have complied with all these; so their powers are exhausted. Any further powers are only as to keeping drains in repair; whereas the bill makes a clean sweep and establishes altogether a new system. Then as regards the sanitary provisions of the bill, it allows the governing body of the city to make what orders they think fit without any appeal to the sheriff as heretofore; and it constitutes the magistrates and council sole judges of the nature and extent of works in any street which they themselves may order the owners of lands and heritages to execute, and the cost of which may be made a burden on such lands and heritages. So far, undoubtedly, the petitioner stands upon the same ground as other owners, but there is a special feature distinguishing his case from that of all other landowners. His grounds adjoin those of Heriot's hospital, who also are large landowners in Edinburgh. Under special arrangements between his predecessors in title, and himself, and the governors of the hospital, they mutually have the right to compel each other to lay out their properties for the common advantage, and with that object to form and open streets and roads communicating with each other. As matters stand, Mr. Hope is safe, for the hospital have only the interests of landowners, and will act as such. Should the bill pass, however, Mr. Hope will be brought directly under the power of the magistrates in council who really are the governors of Heriot's hospital—that is to say, 41 out of 54, or fully four-fifths, of the governors are members of the town council. So that, first, they will, as governors of the hospital, call upon Mr. Hope to make streets and roads sooner than he otherwise would do; and then, as the town council, they will have absolute jurisdiction as to the cost and manner in which these roads are to be constructed. This is a distinct disturbance of existing arrangements. The *Cardiff Improvement Bill* (2 Clifford & Stephens, 154) shows that

when a consolidation bill repeals existing Acts, to the prejudice of owners, they ought to be heard. Another power which the promoters take under the bill is that of compelling owners as soon as streets are laid out, and before houses are built, to causeway them, whereas under the 33rd section of the Edinburgh Roads Act, 1862, there is a reservation as to the conditions the corporation can impose in this matter. As to the question of representation, and of Mr. Hope happening to be a member of the town council, this is immaterial where his separate interests as an owner of property are affected. (*Clyde and Cumbræ Lighthouses Trust Bill, Petition of Sir Michael R. S. Stewart, 2 Clifford & Stephens, 157.*) On the general question of the alteration of the petitioner's status, and the creation of a new general rating authority, the decision in the *Belfast Improvement Bill* (2 Clifford & Rickards, 67) is material. There, the mere alteration of a definition of an existing Act, was the turning point on the question of *locus*.

Shiress Will (for promoters): Sub-section 2 of clause 68 shows that owners will also derive benefits under this bill, for it throws the repairs of streets, courts, foot pavements and footpaths, as to one-half, upon the occupier. Hitherto every owner has been obliged to repair his own footpath.

Stephens: It may reduce the cost opposite his own house, but it makes him pay for other people's footpaths all along the street, and so his liability will be in the end increased—at any rate his position will be changed from what it is now.

Will (in reply): With the exception of the question as to the streets, and the alleged arrangement with Heriot's hospital, the petitioner is not affected differently from any other owner of property in Edinburgh. His contention is that he has power to make arrangements with the governors of Heriot's hospital, as to the direction roads should take, and that inasmuch as the town council compose four-fifths of the governors of Heriot's hospital, that body will, in future, postpone his arrangements with the governors, as adjoining landowners, to the consideration of the good of the burgh at large, in the matter of these particular roads. That however is nothing more than they can do at present. If they were so inclined, the governors could now dictate to Mr. Hope, on the strength of the arrangement, the direction which these roads should take. With this one exception which, as we now see, fails him, Mr. Hope's case is identical with that of all other landowners within the city, and by the law of Scotland they are all represented in the town council.

Mr. RICKARDS: We have never held that the fact of a landowner being an elector deprives him of his right to protection.

Will: His land will not be taken or injured.

Mr. RICKARDS: He says it will be subject to new or additional taxation, which will have the effect of depreciating its value, and it has been held that if the land is so depreciated in value by the effect of the bill, that is, for the purposes of *locus standi*, equivalent to its being taken. Your saying that he is one of those who elect the corporate body, is no answer to his complaint that he will be subjected to new or additional taxation. He stands upon his individual grievance.

Will: There are no new or additional rates, either for sewers or roads. The rate for both of these is unlimited under the existing legislation.

The CHAIRMAN: The case for the petitioner is that there will now be a general rate applicable among others to houses of the petitioner which are already well drained, which will compel him to contribute to the general drainage of the district, with which he has now no concern.

Will: The power to form different drainage districts already exists. Mr. Hope must not merely allege, but show that he will be injured by the bill.

Mr. RICKARDS: It is enough to show that he may be injured. It is not necessary to show that he will be.

Will: The injury which he suggests is too remote.

The CHAIRMAN: He says in his petition, "the districts in the city lying nearest the sea" (we are told that Mr. Hope is near the sea) "and enjoying, therefore, superior facilities for drainage, will be called upon, notwithstanding the heavy expenditure they have hitherto incurred, to submit to a general rate, and accordingly to contribute upon the full scale to the expense of draining other districts less favourably situated than themselves." Surely that is a specific allegation?

Will: Owners of property, who were at the same time dissentient commissioners, have been refused a hearing by this Court. (*Kingstown Township Bill, Petition of John Joseph Crosthwaite and others, 1 Clifford & Rickards, 38.*) As regards the taking away of the appeal to the sheriff, the Roads and Bridges (Scotland) Act does not give any such appeal.

The CHAIRMAN: That Act is not yet in force in Edinburgh.

Will: But it might be adopted at any moment, and it is an expression of the mind of the Legislature.

The CHAIRMAN: The Referees have decided to *Allow* the *locus standi* of the Petitioner against the clauses which affect his status in all

the matters dealt with in his petition, and so much of the Preamble as relates thereto. As this is a bill of formidable size, we shall expect counsel to point out the clauses which affect Mr. Hope for the purposes of our decision.

Agent for Petitioner, *Robertson*.

Petitions of (2) WALTER JAMES LITTLE GILMOUR, and (3) SAMUEL CHRISTIE MILLER.

Sewerage and Drainage Schemes—Petitioners as Mill-Owners—Injurious Affecting—Interference with Mills—Previous Legislation—Arrangement under, Affected by Bill—Extended Powers of Promoters—Petitioners as Land-Owners—Withdrawal of Sewage from Stream—Irrigation—Deterioration of Value of Property—Prescriptive and Statutory Right—S. O. 17 (Notice in Case of Interference with Statutory Rights)—Representation—Practice—Insufficiency of Allegations of Petition—Public Health (Scotland) Act, 1867—Rivers Pollution Act, 1876.

A *locus standi* against the bill was also claimed by two petitioners who alleged that their property would be injuriously affected and its value depreciated. In the case of one of them, who was a mill-owner, it was argued that the bill interfered with an arrangement ratified by a previous Act, and empowered the promoters to make larger demands upon him for "sufficiently fencing and protecting" his mill than they were authorised to do under the former Act, thereby rendering him liable to additional restrictions and expenses. Both the petitioners claimed to be heard against certain clauses in the bill giving the promoters power to impound and divert sewage hitherto sent into a stream which irrigated their properties. These properties were situate outside the burgh, but the stream flowed from the centre of it to and through their lands, and the sewage rendered these most valuable as pastures. The promoters denied that they intended to divert the sewage in question, which they claimed to be entitled to deal with as a nuisance in their capacity as the sanitary authority, and also disputed

the rights of the petitioners to the sewage. It was shown that these rights had been recognised in former Acts, and that the promoters had never exercised their powers under the general law or any private Act to deal with the sewage as a nuisance; that in the case of one of the petitioners, notice had been given to him under S. O. 17, that statutory provisions for his benefit might be altered or repealed under the powers of the bill; and that the bill contained more extended powers to deal with the sewage than were at present in force:

Held, that on all these points the petitioners were entitled to a *locus standi* against the clauses of the bill; and that, on the question of representation, they were not, as land-owners injuriously affected, precluded from being heard.

A preliminary objection was taken to the petitioners' claim to be heard on the subject of roads and footpaths, that the allegations of their petitions did not sufficiently allege the manner in which their property would be injuriously affected. To this extent, the Court declared the objection to be valid.

The *locus standi* of W. J. L. Gilmore was objected to, because (1) as far as regards clause 183 of the bill, which provides that mill-lades or dams within the burgh, which are offensive or dangerous, shall be sufficiently fenced or protected, and that such may be acquired by agreement with the promoters, and diverted, covered over, fenced, or protected by them, inasmuch as the petitioner cannot be held to represent all or any class of owners of mill-lades or dams within the burgh he has no *locus standi* on that point; and further, section 27 of the Edinburgh Police Amendment Act, 1854, which refers to the petitioner's mill-dam or mill-lade, stated in the petition not to be repeated by the bill, is by the bill, in so far as operative, reserved; (2) no part of his estate of Craigmillar, used for irrigation, is alleged to be, or is in fact, within the police boundaries of Edinburgh to which the sewage and drainage operations of the promoters are confined; (3) the only right of opposition the petitioner can have is on the question of compensation, which is provided for by the bill; (4) the petitioner has no right to be heard in regard to streets, footpaths, or other matters referred to in section 13 of the petition,

relevant objections to the same being therein specified; (5) he has no ground for a hearing on the allegations of his petition according to practice.

The *locus standi* of S. C. Miller was objected to, because (1) no lands or heritages belonging to him will be taken or interfered with, the estate of Craigentenny belonging to him not being alleged to be nor being in fact within the police boundaries of Edinburgh, to which the operations of the promoters in regard to sewage and drainage are confined; (2) the objection to clause 100 of the bill, which is a removal of existing powers, will not affect in any way the Craigentenny burn to which the petition refers; (3) the only other clauses complained of refer to powers and operations in regard to sewerage and drainage within the police boundaries with which the petitioner has no right to interfere, and which he has no *locus standi* to oppose; (4) the petitioner has no right or *locus standi*, at all events to oppose any of the operations referred to by him, excepting in regard to compensation, which if due is provided for by the bill; (5) the statements in the petition (even if true) confer on the petitioner no right to be heard according to practice.

Ledgard (for petitioners (2) and (3)): Both petitions deal with the question of streets, and in both cases the petitioners must be considered rather as landowners than as ratepayers. This is a repealing as well as a consolidating bill, and it takes away safeguards of which we have now the benefit, with one hand, whilst it imposes new burdens with the other.

Shiress Will (for promoters): The language of the petitions is not sufficiently specific with respect to the imposition of new burdens to allow the petitioners to be heard on that ground. For example, Mr. Gilmour in his petition says, "the bill contains other provision with reference to streets, footpaths, and other matters, which are of an unusual and oppressive character, and their operation, if sanctioned by Parliament, would be most injurious to your petitioners' property at Canon mills, within the burgh, and detrimental to his rights and interests." It does not say that the bill will impose any new burden on the petitioner, or diminish the value of his property.

The CHAIRMAN: We think that those allegations are hardly specific enough to entitle the petitioners to go into the provisions of the bill with regard to the question of streets, footpaths, and other matters.

Ledgard: Mr. Gilmour's petition further raises the point of interference with certain mill rights. Under section 27 of the Edinburgh Police Amendment Act, 1854, an arrangement was ratified between the petitioner and the

commissioners of police of Edinburgh, that the commissioners should be empowered to call upon the petitioner and other owners of mills using a certain mill-lade, to expend a sum not exceeding £600 in enclosing and fencing the banks of the said mill-lade where necessary for the safety of the inhabitants, and the expense of such inclosing and fencing, and of repairing and maintaining the same in all time thereafter was directed to be defrayed by the mill-owners according to their respective rights and interests in the mill-lade, reserving to them all relief which they might legally have against contemnerous proprietors of lands and houses. Since then the petitioner and other mill-owners interested in the mill-lade have kept it properly fenced as required by the Act, and no reasonable ground of complaint existed. It is now proposed by clause 183 of the bill to enact, instead of or in addition to the foregoing provisions, that "the magistrates and council" (that is the present police commissioners) "may order the owners of any mill-lades or dams within the burgh, which they may consider to be offensive or dangerous, to sufficiently fence or protect the same in such manner as they may direct, or they may acquire such mill-lades or dams by agreement, and divert, cover over, fence, protect, or otherwise deal with them as they think proper." These are much more extensive powers over us than the promoters now have under the Act of 1854, the arrangement under which will be set aside, or at any rate rendered only of partial operation.

Mr. RICKARDS: Does the mill-lade belong to the petitioner?

Ledgard: The mill-lade comes from a public stream, but although the petitioner shares the use of it with others, he has certain rights in the water, and he contributes towards the £600 specified in the Act of 1854. Unless he is one of the owners, how can he be called upon to pay for the fencing?

The CHAIRMAN: There appear to be several alterations made in the status of the petitioner. The present bill compels the owner, at the discretion of the promoters, to fence and protect the same, efficiently, in any case where they consider a mill-lade offensive and dangerous, not merely to replace and keep up the fences. Hence, he may be required to put up further or additional fences, or to cover over the mill-lade?

Ledgard: That is so, undoubtedly. The next point is common to both petitioners, though in somewhat different degrees. They are both owners of lands, which are irrigated by the sewage carried by certain burns, the use of which will be interfered with by the present bill. In Mr. Miller's case those rights have been exer-

cised from time immemorial upon the Craigen-tinny meadows, which consist of about 200 acres of meadow land let by him, chiefly for dairy purposes, at large rents. Notice has been given to him under S. O. 17 by the promoters that certain statutory provisions for his protection or benefit may be altered or repealed by the bill. Although his estate is not within the limits of the borough, it will be seriously injured as a dairy farm if the promoters prevent the present amount of sewage from flowing into the stream which runs from the burgh into his property. Attempts have frequently been made in former Acts to interfere with the petitioner's right to the large amount of sewage which has for years been sent into this stream, but without success, and his right to it has always been recognised in those Acts. Clause 100 of the bill empowers the promoters to erect reservoirs and tanks for the storage of the sewage which has hitherto been sent into this stream and makes them absolute owners of it, with power to sell or otherwise dispose of it, and apply the moneys thence arising for the purposes of the Act. There are also other clauses which inflict damage just as serious upon us, among them being one for vesting in the promoters all sewers and drains in the city, and placing them entirely under their control and management, and another clause for declaring to be sewers, in the same sense, any watercourse, burn, or ditch, which shall have come to be used as a common sewer. These provisions would apply to the Craigen-tinny burn, which collects the sewage of 100,000 inhabitants in Edinburgh, but has always been used outside Edinburgh for the irrigation of land. And another objectionable clause enables the promoters to forbid the introduction into any stream, burn, ditch, or watercourse, of sewage, either within or beyond the borough, after they have executed works for its interception and division. The effect of this would be to deprive this particular stream of the sewage which gives the estate its value.

The CHAIRMAN: Has Mr. Miller any right to the sewage flowing into the stream?

Ledgard: He has a right, which has been established against adjoining proprietors, and which has been repeatedly recognised in previous legislation both in public and private Acts. [*Acts produced.*] Mr. Gilmour irrigates his land in the same way with sewage carried down by another stream, the Powburn, but has not done so longer than the last nine or ten years, though he purchased his land subject to this right of user of the stream.

The CHAIRMAN: Are you contending for a general right on the part of every landowner on

the banks of either of these streams to use the sewage for purposes of irrigation?

Ledgard: No; only in cases where the right exists and has been exercised.

The CHAIRMAN: Of Mr. Gilmour it may be said that the right, if existing, has only been exercised recently, and has not been proved.

Ledgard: That objection was not taken by the promoters. Besides, the sewage flowed upon the land long before Mr. Gilmour was in possession.

The CHAIRMAN: Does it follow because it is a sewage stream that everybody on the banks might have a right to object to the stream being cleared of its sewage?

Ledgard: I think where the character of the stream has become clearly established, the Acts to which I have just referred apply to this stream as well as the stream irrigating Mr. Miller's property. An owner on the banks of a stream may have such a right to use the water as will give him a living. The *Birkenhead, Chester, and North Wales Railway Bill*, petition of *Davis and others* (1 Clifford & Richards, 3), is an authority for the statement that if you threaten to take a man's bread away by a public improvement he is entitled to be heard.

The CHAIRMAN: Do you ask for a general or a limited *locus standi*?

Ledgard: I apprehend that a landowner's *locus* ought to be unlimited.

Mr. RICKARDS: A landowner whose land is touched or taken has a general *locus standi*, but this is rather different.

Ledgard: Although we come in *quâ* landowners we should be content with a *locus standi* against the particular parts of the bill relating to drainage which affect our property.

Shiress Will (in reply): In Mr. Miller's case notice was served under S. O. 17, *ex abundante cautela*; in the case of the other petitioner no similar notice has been given. We do not propose to interfere with any sewers or other works fixed for the purpose of irrigating lands with sewage, and this is the mischief at which the saving clauses were aimed, which my learned friend relies upon. The existing outlets for sewage will not be changed or done away with. Under the Public Health (Scotland) Act, 1867, and the Rivers Pollution Act, 1876, we have, as the nuisance authority, power to deal with any watercourse, ditch, &c., which may be injurious to health, and the provisions of this bill confine our operations to cases where a nuisance in that sense arises.

Ledgard: The town council have never put that Act in force against us. The powers of the bill are greater than the existing Acts confer.

For example, the word "divert" is not to be found in those Acts though it is inserted in the bill.

Will: Most of the Acts upon which my learned friend relies have been repealed.

The CHAIRMAN: The right is not apparently founded upon the Acts, though the Acts, from time to time, have recognised and preserved it. Merely repealing the Acts will not abrogate the right.

Will: In matters of public health, and when you are dealing with a nuisance, ought it not to do so?

Mr. RICKARDS: If you were to intercept the sewage and purify the stream, you would be depriving the land of the petitioners of that which gives it its greatest value.

Will: We dispute the prescriptive right of the petitioners to the sewage in the stream; and, secondly, we do not intend to divert it.

Mr. RICKARDS: Their right appears to have been recognised in previous Acts, and you take power under the bill to divert and impound the sewage where you think necessary?

Will: We are only seeking to perform the duty which public legislation has thrown upon us. Is a man, therefore, whose property is beyond the borough, to have a *locus*?

Mr. RICKARDS: Supposing that it is a public duty to purify streams, is not it equitable, when private interests are affected by that operation, that, at all events, they should be compensated?

The CHAIRMAN: It is part of your argument that the general Acts you have cited apply to these streams, notwithstanding which you continue to use them as sewers?

Will: That is so, as matters stand. But surely there can be no such right as the petitioners set up as acquired by long use, in what is a nuisance.

Mr. RICKARDS: If a stream of this kind ran through private land, it would not necessarily be a nuisance?

The CHAIRMAN: It is a source of profit to the petitioners.

Will: It has not been shown that anybody in fact has a right to the sewage in the burn. But whether he has or not, a sanitary authority is surely right in coming for powers to deal with mill-lades or burns.

Mr. RICKARDS: Here the person affected by the proposal claims to be heard, to show that the power sought is too great to be conferred on a public body.

Will: The power sought is only to prevent a danger to the public. You must give a discretion to the local authority.

The CHAIRMAN: That may be for the Committee to decide?

Mr. RICKARDS: As to how much discretion should be entrusted to the local authority, and with what limitations, these are matters in which the parties affected would probably desire to be heard, with a view, it may be, of fencing round the power with certain restrictions.

Will: The powers are really not more extensive than in the Act of 1854. The obligation to fence only arises where the mill-lade is offensive or dangerous.

The CHAIRMAN: Without repealing the provisions of the Act of 1854, you superadd further powers. The word "protect" for instance is used, which might mean "cover in."

Will: Then I take the point broadly, that as owners petitioners are represented by the promoters, and it is only as owners that any injury is suggested. Owners have been refused a hearing. (*Local Government Board Provisional Order (Hucknall Torkard) Confirmation Bill, 2 Clifford & Rickards, 115.*)

Mr. RICKARDS: In that case the owners were not people whose individual property was affected by the bill. Here the contention of the petitioners is, not that they will be affected by any proposed taxation, or by anything in common with the body of ratepayers, but that they have property which will be deteriorated and diminished in value by the operation of the bill.

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed* on the question of streets and footpaths, as to which the allegation of injury was not sufficiently specific, but is *Allowed* on the other points, that is to say, interference with their rights as mill-owners, and with their rights to the sewage conveyed to their estates by the streams in question.

Agent for Petitioners, *Loch*.

Petition of (4) THE CORPORATION OF LEITH.

Drainage—Neighbouring Burghs—Joint Promoters of Former Act—Amendment of—Alleged Alteration in Status of Petitioners—Joint Commissioners—Representation of Petitioners by—Separate Interests.

Under the Act of 1864, jointly obtained by the corporations of Edinburgh and Leith, a commission elected by the two bodies had been appointed to carry out the drainage of so much of the two burghs as drained into a river traversing portions of both burghs. The present bill united the whole of Edin-

burgh into one drainage district, without, however, extinguishing the joint commission, and was unanimously supported by this commission. The corporation of Leith opposed the bill on the ground that it amended the joint Act of 1864, and was promoted without their co-operation. It was contended by the promoters, that with the exception of one or two slight alterations in the mode of collecting payments, under the Act of 1864, which, however, did not affect the powers or revenues of the commissioners, the bill applied to Edinburgh alone and did not affect Leith, and further, that under any circumstances the petitioners could not be heard against the bill, which had the approval of commissioners elected by and representing their own burgh :

Held, that no distinct interest of the petitioners was so affected as to entitle them to be heard against a bill assented to by their own representatives.

The *locus standi* of the corporation of Leith was objected to, because (1) by the Edinburgh and Leith Sewerage Act, 1864, a commission was appointed for the purification of the river or water of Leith through Edinburgh and Leith, which commission is composed of members of the town council of both towns in the proportion settled by Parliament in converting the whole of Edinburgh into one drainage district. Under the bill it is necessary to deal with the water of Leith, but such dealing has been confined to the Edinburgh district formed under the Act exclusively, the separate interests of Leith being in no way affected. The petitioners have no *locus standi* to oppose this bill, the interest of all concerned being represented by the said commission, by which it has been unanimously approved, the representatives of Leith concurring; (2) by the provisions of the said Edinburgh and Leith Sewerage Act, 1864, a reasonable sum to be paid to the commissioners is to be charged for effecting junctions with the works of the commissioners, and any surplus of such sum after the application of the same to the repair and maintenance of the works is divisible in certain proportions betwixt the corporation of Edinburgh and the corporation of Leith. No power is taken by the bill to diminish or alter this source of revenue, or to alter the proportions of payment of the surplus; but, instead of individuals forming junctions and

paying their several quotas to the commissioners, the promoters are to pay the amount of such sums to such commissioners out of the sewage rates of the city, which are not limited in amount. The commissioners alone have a *locus standi* to appear upon this point; but even if the corporation of Leith had any right, they do not allege objection to this, the only point on which they could pretend an interest; (3) generally, while not admitting the statements in the petition, the promoters maintain that it does not state any facts or reasons for a hearing against the bill according to practice.

Pembroke Stephens (for petitioners): The burghs of Edinburgh and Leith adjoin, and the water of Leith traverses portions of both burghs. In 1864 the Edinburgh and Leith Sewerage Act was passed, the object of which was to constitute one drainage district for the portions of both districts draining into the water of Leith, and a joint commission, composed of representatives of both burghs, was created for the purposes of the Act. The bill recites that it is expedient to repeal and amend some of the provisions of that Act of 1864, and the result will be that, there having been hitherto a joint sewerage district formed of the adjacent portions of each burgh, and separate drainage districts formed of the remaining portions of each burgh, the bill will make one general district for the whole of Edinburgh. The effect of the bill will be to over-ride the Edinburgh and Leith Sewerage Act, 1864, and to give the magistrates and council of Edinburgh powers and jurisdiction in matters which are now under the management of the joint sewerage board, or else to make the board a mere sub-committee of the Edinburgh authority. There are many clauses in the bill which will effect this object; among others, clause 187 requires that applications for junctions with the Edinburgh sewers shall in future be made to the magistrates and council; clause 188 provides, "The sums authorised to be levied by the water of Leith sewerage commissioners under the Edinburgh and Leith Sewerage Act, 1864, from the owners of land, houses, or other property forming junctions with any sewer, outfall, or drain, connected with the main and branch sewers and works by the said Act authorised, or built upon, enlarged, or altered, shall no longer be leviable by the said commissioners within the Edinburgh district, but such sum so leviable shall, in order to the regulation of the portion of the burgh assessment applicable to sewers and drains, from time to time be paid by the magistrates and council out of such last-mentioned assessment to the water of Leith sewerage commissioners for the purposes of their Act, as amended

by this Act." Again, clause 190 provides that "any sums required to be paid by the magistrates and council to the water of Leith sewerage commissioners, for maintenance and repair of their main and branch sewers and works, shall hereafter be paid by the magistrates and council to such commissioners out of the assessment leviable for sewerage and drainage purposes over the burgh, and the right to levy such sums within the Edinburgh and Leith district of such commissioners exclusively shall cease as regards the Edinburgh district." There are other provisions of the bill enabling the town council to make repairs and improvements in the artificial works in the bed and channel, or on the banks of the water of Leith, and which otherwise clearly interfere with the Act of 1864. The respective obligations thrown on the cities of Edinburgh and Leith, and embodied in the Act of 1864, were only settled, after prolonged negotiation, by the then Lord Justice General for Scotland (Lord Colonsay) acting as arbitrator, and the principle recognised by that Act is clearly that of one joint drainage district for the two burghs. That Act was brought into the House bearing the names of the city clerk of Edinburgh and the town clerk of Leith, and is, we say, our joint property, and equivalent to a statutory declaration between us. We, the corporation of Leith, and the corporation of Edinburgh for convenience agreed that that joint scheme should be carried out and worked by certain commissioners, to be named from time to time. But the commissioners even are not the authors of the bill. It is promoted by one of the joint proprietors of the Act of 1864, and in opposition to the wish of the other proprietor. We have, moreover, been served with notice under S. O. 17.

The CHAIRMAN: The main objection to your *locus standi* is that you are only persons who appoint the commissioners, the commissioners themselves for both Leith and Edinburgh approving the bill?

Stephens: We were the persons who agreed with Edinburgh in 1864, and this Act formed the basis of our agreement. If they can alter it in one particular, they can do so in all.

Mr. RICKARDS: Does this bill alter the principle of rating, or make a different assessment over Edinburgh and Leith?

Stephens: It alters it indirectly. It is impossible to tell what the ultimate effect of it upon the rating will be, because the districts themselves are to be altered. We want to go before the Committee to ask the promoters to explain their own proposal, and why they desire to tear up Lord Colonsay's award. Has there ever been a case before, where an Act, with the names of

two town clerks on the back of it, has been altered to the prejudice of one of them, without at least hearing what he has to say?

Mr. FORSYTH: Is it not remarkable that the bill should have been "unanimously approved" by the joint board?

Stephens: The matter was not fully understood then. But even if they were promoting the bill themselves, the Act of 1864 is ours, not theirs; and we have never assented to the alterations proposed.

Shiress Will (for promoters): The petitioners are the corporation of Leith; but the persons (if any) entitled to be heard against the proposals of this bill, would be the commissioners under the Act of 1864, to whom the petitioners have jointly, with Edinburgh, entrusted their interests in this matter. None of the powers of the commissioners under the Edinburgh and Leith Act, 1864, are however in any way affected, and they have unanimously approved of this bill. The representatives of Leith are upon the board of the commissioners, and therefore the corporation of Leith cannot be heard to represent any separate interests. If the grievance were a real one and not imaginary, the Leith representatives on the joint board would be the first to discover it, and cry out. As to finance, all that the bill does is to put upon Edinburgh the burden of levying from owners of property a certain sum in respect of drainage, &c., which will then be paid over by the Edinburgh town council to the commissioners, instead of the individuals paying it directly to the commissioners. The assessment will still be made by the commissioners, and there will be practically no alteration of amount. The bill will not in any way affect the relative position of the parties. The alterations made do not affect Leith at all, but are purely domestic arrangements for the purposes of the burgh of Edinburgh. It is for the petitioners to show that there is a material alteration made in the Act of 1864 to their prejudice, but they have not done so. Edinburgh can have no interest to levy otherwise than a reasonable rate; and there is a proviso to clause 188 compelling the promoters to furnish accounts to the commissioners of the sums received from private owners for the joint body of commissioners, and also providing for a division of the surplus between the two burghs.

The CHAIRMAN: The *locus standi* of the Corporation of Leith must be *Disallowed*.

Agents for Petitioners, Simson & Wakeford.

Agents for Bill, J. & J. Graham.

FURNESS RAILWAY BILL.

Petitions of (1) THE SANDSCALE MINING COMPANY; (2) HODBARROW MINING COMPANY; (3) CUMBERLAND IRON MINING AND SMELTING COMPANY; (4) EARL OF LONSDALE.

30th April, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, Bart., M.P.; Mr. FORSYTH, M.P.; and Mr. BRISTOWE, M.P.)

Harbour Jurisdiction, Extension of—Bye-Laws, Penalties for Breach of—Taxing Powers, Transfer of—Light Duties—Traders—Lessees—Interference with Shipping Facilities—Obstruction of Entrance to Harbour—Saving Clause—Tenant for Life—Lessor—Deterioration in Value of Property—Lord of Manor—Anchorage Dues—Harbours, Docks and Piers Clauses Act, 1847.

This was an omnibus bill which contained, *inter alia*, clauses extending the existing jurisdiction of the promoters as harbour authorities. The petitioners were, with one exception, trading companies and lessees of mines, the other petitioner being tenant for life of valuable mineral estates, lord of the manor, and lessor to one of the trading companies. All the petitioners claimed a *locus standi* for similar reasons, namely, that the bill extended the powers of the promoters, as harbour authorities, so as to include a channel leading to the petitioners' point of shipment, and they alleged that owing to the dredging and other operations authorised by the bill the entrance to their shipping jetties would be liable to become obstructed. They also alleged that the bill contained no clause protecting the channel leading to their wharves from obstruction, whereas the Act under which the promoters were constituted harbour authorities contained a distinct proviso to that effect. The petitioners further complained of interference by the bill with a harbour of refuge used by ships engaged in their trade, and also of the transfer to the promoters of certain light duties, the levying of which had hitherto been entrusted to an independent body of port trustees and commissioners:

Held, that the interests of the petitioners were sufficiently affected by the proposed extension of powers to entitle them to be heard against the bill.

The bill contained certain clauses which related to the jurisdiction of the promoters over the harbour of Barrow and the channels in connection therewith, and also to the transfer to them of certain light duties hitherto vested in a body of port trustees and commissioners. These clauses were the 26th, 27th, 33rd, 34th and 35th, and it was against them that the opposition of the petitioners was directed. Clauses 26 and 27 of the bill extended the limits within which the powers of the harbour-master, dock-master, pilots, meters, and weighers appointed by the company could be exercised, as well as the application of the company's bye-laws [all of which were at present confined to Barrow harbour and its immediate vicinity] so as to comprise Piel harbour and Scarth channel. Clauses 33, 34 and 35 transferred to the promoters certain rights of the commissioners and trustees of the port of Lancaster relating to light duties on vessels navigating Barrow harbour and the neighbouring waters, and contained provisions for the application of sums received by the company for the light duties, and the regulation of accounts between the two bodies.

The *locus standi* of the petitioners was objected to on similar grounds, namely, because (1 and 2) with reference to Piel harbour and Scarth channel, and the transfer to the promoters of certain rights of the commissioners and trustees of the port of Lancaster, the petitioners have not any exclusive rights, powers, or authorities over, nor do they represent the shipping trade resorting to the said harbour or channel, and they are only affected (if at all) as one of the public; (3) no power of levying dues or rates in Piel harbour or Scarth channel is conferred by the bill; (4) by the Furness and Barrow Harbour Act, 1863, the promoters have jurisdiction over Piel harbour and Scarth channel for the purpose of maintaining, regulating, improving, and buoying the same, and the object of clauses 26 and 27 of the bill is to enable them to efficiently exercise the powers conferred upon them by the said Act, and the bill does not confer upon the promoters jurisdiction or control over any part of Piel harbour or Scarth channel beyond those portions which by the Act of 1863 are expressly placed under their jurisdiction, and there is no foundation for the apprehension of the petitioners that the exercise of the powers of the bill will injuriously affect

the channels of the river Duddon; (5) with reference to the transfer to the promoters of certain powers of the commissioners and trustees of the port of Lancaster no rights or interests of the petitioners will be affected thereby, and the trustees are themselves petitioning against the bill; (6) provisions of section 14 of the Act of 1863 for the protection of Piel harbour and the Duddon channel remain in full force and effect and are not altered or repealed by the bill; (7) no property, rights, or interests of the petitioners are interfered with by the bill, and they have not, nor do they allege any grounds entitling them to be heard according to practice.

Pope, Q.C. (for (1) Sandscale mining company): We are a trading company whose works are situated on the estuary at the entrance to the river Duddon. By the bill the promoters are extending their powers over Scarth channel, which is a channel running out of Barrow harbour, and crossing, as it were, the entrance to the river Duddon. The promoters have, under the Furness and Barrow Harbour Act of 1863, power for maintaining, improving, regulating, and buoying Scarth channel, but, by the present bill, they ask for further power to cleanse, deepen, and improve Scarth channel; and they also, by clauses 26 and 27 of the bill, extend the powers of their harbour-master, pier-master, pilots, weighers and meters, and the limits within which their bye-laws shall be in force in Scarth channel and Piel harbour. Their powers over Scarth channel were, in the Act of 1863, limited by this proviso:—"That no hurt, prejudice, obstruction, or injury shall be done to the Duddon channel, or the navigation of the Duddon river, by the exercise of any of the powers by this Act given." The present bill, however, contains no such proviso. The preservation of the channel of the Duddon river is of the utmost importance to us, as we load all our ore, that is sent away by sea, from jetties running into the river; and, inasmuch as none of this goes over the Furness railway, our interests and that of the company in the matter are entirely distinct. We are informed that if the Scarth channel is materially deepened, the current, which at present runs up the Duddon channel, and keeps it clear, will be diverted, and there will be serious danger of the latter becoming silted up and obstructed; and we therefore say the promoters are not entitled to take any powers over Scarth channel, unless they maintain the proviso and exemption which applied to those powers originally.

The CHAIRMAN: Is there any harbour authority existing at present over the Duddon?

Pope: No; and therefore we cannot be excluded on the ground of representation. We

also claim to be heard against any interference with, or increased jurisdiction over, Piel harbour, which is a harbour of refuge for all ships seeking or leaving the Duddon river.

Mr. FORSYTH: Would you not have a remedy at common law under the proviso of the Act of 1863 referring to Scarth channel?

Pope: That would be very doubtful. In authorising certain works you authorise whatever mischief is necessarily connected with them. We claim a *locus standi* against clauses 26, 27, 33, 34 and 35, which are the clauses relating to the promoters as dealing with the harbours.

Milward, Q.C. (for (2) Hodbarrow mining company): Our case is similar to that of the Sandscale company, and the same arguments are applicable. The Court will see also that the bill extends the present rights of pilotage to vessels coming into Piel harbour, and generally extends the limits of the bye-laws of the Furness railway company applicable to the harbour.

Wright (for (3) Cumberland Iron Mining and Smelting company, and (4) Earl of Lonsdale): The position of the Cumberland iron company is substantially similar to those of the other trading companies. By the incorporation of the Harbours, Docks, and Piers Act with the bill, a very extensive additional jurisdiction is given to the promoters, because under that general Act, wherever meters and weighers are appointed, the harbour authority is empowered to authorise them to levy payments for their remuneration, and although no new rates are mentioned in the bill, that empowers the harbour authority to cast a new charge upon the shipping using the Duddon river. We object to the transfer of the lighting dues from the Lancaster commissioners, who are an independent body, to the Furness company, with an interest distinct from the shipping interest, and for purposes wholly different from those to which the dues are at present applicable. Parties who are taxed have a *locus standi* to object to being handed over to another taxing body. (*Clyde Lighthouses Bill*, 2 Clifford & Stephens, 43.) With regard to the petition of the Earl of Lonsdale, it alleges that he is tenant for life of large estates and minerals near the estuary of Duddon, and his position in relation to the other petitioners is, that he is a lessor instead of a lessee, and the value of his estates will be diminished if the bill passes. In addition to that his right to anchorage dues will be affected by the bill—if it affects shipping interests. He is also lord of the manor. (*Kingston-upon-Hull Docks Bill*, 2 Clifford & Rickards, 109; *Fareham and Netley Railway Bill*, Smethurst, 120; *Clyde Lighthouses Bill*, 2 Clifford & Stephens, 42.)

Michael, Q.C. (for promoters): With regard, first, to the additional words in the present bill, "deepen and cleanse," the Act of 1863 contained the general term "improve," and the words in the bill are merely added as explanatory of those in the Act of 1863. As to the proviso in the Act of 1863 against our doing anything to interfere with the navigation of the Duddon channel, we are willing to concede the petitioners a *locus standi* to see that such proviso is inserted in the present bill. The bill confers no fresh powers to execute works other than those authorised under the Act of 1863. It imposes a duty and obligation without conferring any right upon us. We shall not be able to levy any tolls which we could not levy under the Act of 1863. We do not alter any power which we exercise, except our regulative power over the harbour by means of our harbour officials, and meters, and weighers. We take no compulsory powers as to pilotage, save when pilots are employed. Then the bye-laws are to govern them.

Mr. FORSYTH: This bill gives you the same power over Piel harbour that you have now over Barrow. Although you may not be able to levy a toll or rate, you can exact penalties for breaking the bye-laws within more extended limits?

Michael: The companies are not the right parties to petition. They are not interested in ships *quâ* shipowners, and they have no interest diverse from the general public.

The CHAIRMAN: The *locus standi* of all the Petitioners is *Allowed* against clauses 26, 27, 33, 34 and 35 of the bill.

Agents for Petitioners (1), *Dyson & Co.*

Agents for Petitioners (2, 3, and 4), *Holmes, Anton, & Greig.*

Petitions of (5) ULVERSTON LOCAL BOARD, and (6) MILLOM LOCAL BOARD.

Local Boards—Claim to Represent Commercial Interests of District—S. O. 134 (as to District Prejudicially Affected).

Two local boards opposed the same provisions of the bill, on the ground that the trade of the district would be injured by the increased jurisdiction of the promoters as harbour authorities, and that under S. O. 134, the petitioners were the proper parties to represent the ratepayers and inhabitants, whose interests were in this matter identical with those of trade:

Held, that the interest of the local boards was too remote to entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to on similar grounds to those of petitioners (1) and generally on the grounds that no new rates or tolls were proposed by the bill, and the petitioners could not be taken to represent the commercial interests of the district alleged to be affected.

Tahourdin (for (5) Ulverston and (6) Millom local boards): We ask to be heard under S. O. 134, to protect the interests of the district which we allege will be injuriously affected.

The CHAIRMAN: Has a local board any authority to appear in cases where the commercial interests of the district are affected?

Michael, Q.C. (for promoters): No, not under the Public Health Act, 1875.

Tahourdin: We represent the general welfare of the district. I submit that the representatives of the ratepayers are entitled to be heard against anything that may injuriously affect the general interests of the districts. The whole prosperity of these districts depends upon their trade, which trade depends on facilities being afforded to shipping, and the bill threatens those facilities. The rateable value of the district may be materially affected if the bill passes. In some of the bills for the amalgamation of railways, the *locus standi* of corporations has been allowed, and this is an analogous case. (*London, Brighton and South Coast Railway Bill*, 1 Clifford & Stephens, 144.)

Michael: There is no raising of present, or imposing of new tolls by this bill.

The CHAIRMAN (to Mr. Michael): We will not trouble you to reply further. The Referees are of opinion that the interests of the local boards in the bill are too remote.

Agents for Petitioners, *Tahourdin & Hargreaves.*

Petition of (7) The COMMISSIONERS AND TRUSTEES OF THE PORT OF LANCASTER.

Port Commissioners—Right of, to Represent Shipping Interests—Harbour of Refuge—Alleged Interference with—Extension of Bye-laws to.

The petitioners were commissioners and trustees of the port of Lancaster, which was largely frequented by ships navigating parts of the harbour and channels under the jurisdiction

of the promoters, whose powers under the bill, as far as bye-laws and regulations as to anchorage, &c., were concerned, would be extended to a harbour of refuge, which formed an important addition to the port of Lancaster. The petitioners contended that the shipping interests of the port, which they claimed to represent, would be injuriously affected if this harbour of refuge were in any way interfered with, and that there would be a diminution in value of certain light duties, to a portion of which they would still be entitled, although the levying of them was by the bill transferred to the promoters :

Held, that besides their right to be heard on the subject of the transfer of the light duties, the petitioners were entitled to a *locus standi* against the clauses of the bill dealing with the extension of the promoters' harbour jurisdiction.

The *locus standi* of the petitioners was conceded as to the transfer of light duties from themselves to the promoters; against the rest of the bill the objections rested on similar grounds to those in the cases of the other petitioners.

Pember, Q.C. (for (7) Commissioners and trustees of the port of Lancaster): Over and above our right to be heard against the transfer to the promoters of the light duties hitherto levied by us, we claim a *locus standi* against the clauses of the bill affecting Piel harbour. This harbour forms a roadstead and harbour of refuge for vessels coming in and going out of the port of Lancaster, which is the chief port of Morecambe Bay, except Barrow. Piel harbour attracts shipping into the port of Lancaster, and by so doing indirectly increases the light duties which are now payable to us, and in which even if this bill passes we shall still have a large interest. If Piel harbour becomes not a free harbour of refuge, but a part, to all intents and purposes, of Barrow harbour, the light duties will be diminished. We are the proper representatives of the shipping interests to discuss the propriety of including an at present free harbour within the jurisdiction of the promoters.

Michael, Q.C. (for promoters): The petitioners have no right to a *locus standi*, except as against the transfer of light duties, which we concede to them. No new tolls are to be levied in Piel harbour, and we only ask power to make proper

regulations in order that Piel harbour may be more effective as a harbour of refuge. The Lancaster commissioners have nothing to do with anything connected with those harbours, except the levying of the light duties, and beyond that have no right to be heard.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed* against clauses 26, 27, 33, 34, and 35 of the bill. (See *ante* as to these clauses.)

Agents for Petitioners, *Tahourdins & Hargreaves*.

Agents for Bill, *Toogood & Ball*.

GAS AND WATER ORDERS CONFIRMATION (THIRSK DISTRICT WATER ORDER) BILL.

Petitions of (1) The VESTRY OF THIRSK; (2) The INHABITANTS OF THIRSK.

19th May, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH, and Mr. RICKARDS.)

Water Company—Establishment of, in New District—Rural Sanitary Authority—Vestry as Constituent of—Vestry Claiming to Appear as Local Authority—S. O. 134 (District Injurious Affected)—Inhabitants, Owners, &c.—Public Health Act, 1875—Public Health (Water) Act, 1878—Obligations of Inhabitants under—Rights of Inhabitants to Oppose Establishment of Water Company—Practice—Injurious Affecting—Sufficiency of Allegation.

A water company sought power to establish waterworks for the first time in a new district. There were two petitions against the bill, the first from the inhabitants of a parish within the limits of the bill in vestry assembled, and the second from a number of persons describing themselves as inhabitants, owners, and occupiers. The former claimed to be heard, under S. O. 134, but it was shown that the local authority of the district was the board of guardians, of which the vestry was only a constituent, and the Court therefore refused the *locus standi* of the vestry. The other petitioners claimed to be heard, on the ground that, under the provisions of the Public Health Acts of

1875 and 1878, it would be competent for the board of guardians, who were the rural sanitary authority, to compel them to take the company's water, and thus subject them to a water rate, from which they were at present exempt. The promoters contended that this liability was not really enforceable under those Acts, and that even if such were the case, no injury would be inflicted on the inhabitants :

Held, however, that these petitioners were entitled to be heard against the bill.

To the petition of the inhabitants, a preliminary objection was also taken that it did not allege that the parish would be injuriously affected; but as the petitioners alleged that they would themselves be injuriously affected, the Court disallowed the objection.

The *locus standi* of the vestry of Thirsk was objected to, because (1) no lands, &c., of theirs are taken under the bill; (2) it is not alleged in the petition that the parish will be injuriously affected; (3) a petition against the bill has been presented by persons describing themselves as inhabitants, owners, lessees, and occupiers of property in the parish. If the last-mentioned petitioners are entitled to be heard (which the promoters do not admit), the petitioners to whose right to be heard the promoters are hereby objecting, can have no right to be heard also; (4) the promoters deny altogether the truth of the allegations in paragraph 6 of the petition.

The *locus standi* of the inhabitants, &c., of Thirsk was objected to, because (1) no lands, &c., of theirs are taken under the bill; (2) such of the petitioners as are inhabitants of the parish of Thirsk are not entitled to be heard against the bill, because it is not alleged by the petition that the parish will be injuriously affected by the bill; and, further, because the petitioners do not adequately represent the inhabitants generally of the parish; (3) a petition against the bill has been presented by persons describing themselves as the ratepayers of the said parish of Thirsk in vestry assembled. If the last-mentioned petitioners are entitled to be heard against the bill (which the promoters nevertheless do not admit), the petitioning inhabitants, &c., can have no right to be also heard; (4) the promoters deny altogether the truth of the allegations contained in paragraph 6 of the petition.

Michael, Q.C. (for (1) vestry of Thirsk, and for (2) inhabitants of Thirsk): The district of Thirsk is at present supplied wholly by wells and springs, and not by any water company. The right of inhabitants to oppose the establishment of a water company for the first time in a district has never yet been decided, and it stands on a different footing to the case of a gas bill. There is no obligation on the part of any one to take gas, while, under the Public Health (Water) Act of 1878, there are the strictest obligations on the part of inhabitants to take water. Under the Public Health Act, 1875, (section 62) the sanitary authority, upon the report of their surveyor, has the power, where there is a company supplying water within the district, to force the inhabitants to take that water at the rates at which the water is supplied by the company, under the local Act, or where there is no local Act in force, at twopence a week. The inhabitants have therefore a distinct interest in objecting to the establishment of a water company. Section 52 of the same Act renders it necessary for a local authority to give any existing company empowered to supply water within the district written notice of the extent to which water is required by the local authority, and prohibits the local authority from supplying water within such limits, so long as any such company is able and willing to give a proper supply, so that practically, when once a waterworks company has got power to come into a district, the local authority can do nothing towards the supply of water in that district.

The CHAIRMAN: Do the local authority petition?

Michael: The local authority here is the rural sanitary authority for the district, which is composed of several parishes, and it is not worth their while to oppose on behalf of one parish. So far as the vestry is concerned, I say that, although they are not strictly the local authority for the district, they are the local authority representing the parish for this purpose, and they claim a hearing under S. O. 134. The vestry, in their petition, allege—"Your petitioners are the ratepayers of the parish of Thirsk in vestry assembled, and they are injuriously affected by the bill." That is a sufficient allegation.

The CHAIRMAN: We consider that allegation sufficient; but we do not think that the vestry comes within the meaning of S. O. 134, as "the municipal or other authority having the local management of the district."

Michael: With regard to the petition of the inhabitants, by the Act of 1878 every single inhabitant acquired a right to petition, just as he

is responsible in regard to supplying his house with water.

The CHAIRMAN: As things stand at present can the board of guardians, as the rural sanitary authority, enforce the provisions of the Act of 1878.

Michael: Yes, the power is vested in the guardians *quâ* the rural sanitary authority.

Rees, Parliamentary Agent (for promoters): There is nothing in either petition to show that the district or inhabitants will be injuriously affected, and in any case they are only individual petitioners.

Mr. RICKARDS: The inhabitants state that they will be injuriously affected, and they describe themselves as inhabitants, or lessees, or occupiers, and sign the petition in large numbers.

Rees: So far as regards gas supply (and I contend that for the present purpose it is analogous to water supply) the introduction for the first time of a gas company into a district does not entitle the inhabitants to be heard. (*Sutton Gas Bill*, 1 Clifford & Rickards, 266; *Castleford and Whitwood Gas Bill*, *Ib.*, vol. 2, 78.) I contend that neither in the Act of 1875 or 1878 is there any obligation upon any person to take water of the water company.

Mr. RICKARDS: The company is the agent of the local authority for the water supply to the inhabitants, and supposing in the opinion of the surveyor a house is insufficiently supplied, and supposing there is no other supply to go to but the water of the company, the owner or occupier is obliged to take the water of the company at their rates.

Rees: The introduction of this water company must be a benefit to the inhabitants, inasmuch as it gives an opportunity of obtaining a more economical supply than they can get for themselves.

The CHAIRMAN: The *locus standi* of the Vestry is *Disallowed*; the *locus standi* of the Inhabitants is *Allowed*.

Agent for Bill, Rees.

Agents for Petitioners, Dyson & Co.

GLASGOW MUNICIPAL EXTENSION BILL.

Petition of (1) MAGISTRATES AND COMMISSIONERS OF POLICE OF THE BURGH OF CROSSHILL; (2) MAGISTRATES AND COMMISSIONERS OF POLICE OF THE BURGH OF GOVANHILL.

20th and 21st March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. BONHAM-CARTER.)

Extension of Borough—Magistrates and Commissioners of Police—Insulation of District—Interference with Police System—County Police Rate—Diminution of Rateable Area—No Separate Police Systems—Commissioners of Supply—Representation—Rival Claims to Annex District by Local Authorities—Competitive Schemes for Extending Municipal Boundaries—Lis Pendens—Proceedings not bonâ fide—Res judicata.

A corporation took powers to include certain areas within the limits of their jurisdiction, and by so doing surrounded the two small districts of Crosshill and Govanhill, which were under independent jurisdictions, in such a way as to insulate them from the counties of which, for police purposes, they formed portions. The local authorities representing these two districts petitioned, complaining that they would thus be separated by an intervening district under the jurisdiction of the promoters from the rest of the county police, and also that, as the area proposed to be annexed by the promoters at present formed part of the county for rating purposes, they would be subjected to heavier rates. As, however, the petitioners had not in either case a separate police of their own it was held that upon this, as upon another question—the absorption of roads into the jurisdiction of the promoters—they were represented by the commissioners of supply of the counties to which they belonged. The magistrates and commissioners of police of Govanhill also claimed to be heard on the ground that they were themselves seeking to incorporate into their own burgh a piece of ground, over which the promoters were taking powers, and that the two schemes were therefore competitive. It was shown, however, that the case was really

res judicata, and not a *bona fide* claim, and the Court accordingly disallowed the *locus standi* of the petitioners on this ground also.

The *locus standi* of (1) the magistrates and commissioners of police of Crosshill was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2) no rights, property, or interests of theirs, or of the burgh, or police district of Crosshill are proposed to be interfered with; (3) no portion of the land proposed to be annexed to and included in the city and royal burgh of Glasgow is situated in or within the police district of Crosshill, and the petitioners, as the police commissioners, have no jurisdiction or right over the district proposed to be added, or any portion thereof, and do not in any way represent the district proposed to be added, or any portion thereof, or of any adjoining district beyond the limits of their own burgh; (4) the petitioners not being owners, occupiers, or ratepayers in the district proposed to be added to the city and burgh of Glasgow, and in no way representing the owners, occupiers, or ratepayers therein, have no right or title to attempt, as the petitioners do, to represent the said district or any of the interests connected therewith, and not being the municipal or local authority of the said district, or any portion thereof, have no right or title to be heard against the bill, or with respect to the effect the same may have on or any change it may effect in the local government of the district, and the incidence of taxation therein; (5) the statements in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the petition are untrue, and even if true they are irrelevant on the question of *locus standi*; (6) the allegations of the petition that the petitioners are the police authorities of a small district separate and distinct from that proposed to be affected by the bill, and to which district their powers and jurisdictions are limited, cannot confer upon them any right to be heard; (7) the petition does not disclose, nor is it the fact, that the petitioners have any interest in the powers sought by the bill entitling them to be heard in opposition thereto; (8) the petitioners are not the magistrates, or police commissioners, or municipal or local authority having the control of any portion of the property or district which may be interfered with under the powers of the bill; (9) the interests of the inhabitants and ratepayers of the district proposed to be added are represented by other petitioners, namely, the commissioners of supply of the county of Renfrew, within which county the district proposed to be added is situate; (10) it is not

proposed by the bill to throw any new charge or burden, by assessment or otherwise, upon or in any way to affect the police district of Crosshill, represented by the petitioners; (11) the petitioners have no such interest in the proposals of the bill as to entitle them to be heard.

The *locus standi* of the magistrates and commissioners of police of Govanhill was objected to on similar grounds, *mutatis mutandis*, and also because certain proceedings referred to in paragraph 8 of the petition were only commenced on the 27th February last, the day after the bill had been read a second time in the House of Commons, and the said proceedings have merely been taken with the view of being filed by the petitioners as a ground for enabling them to be heard against the bill. When the original application to constitute Govanhill into a police district was presented, the portion referred to in paragraph 8 of the petition was also sought to be included in that district; but, on an appeal to the Home Secretary, he, on the 21st May, 1877, reversed the decision of the sheriff, and excluded that portion, and limited the Govanhill district to that which is now included within its boundaries. The application therefore made by the petitioners is an attempt by them, by an application to the sheriff of Lanarkshire, to reverse the decision of the Home Secretary reversing that of the sheriff, and has simply been taken with the view of affording a colorable pretence to obtain a *locus standi* against the bill. The promoters submit that the presentation of such an application cannot confer any right on the petitioners to be heard on their petition.

Saunders (for the magistrates and commissioners of police of the burgh of Crosshill and the burgh of Govanhill): The proposal of the bill is not to incorporate Crosshill but to extend the limits of the Glasgow municipal boundaries in such a way as to make the burgh an island in the middle of the Glasgow limits. The three areas, which are by the bill to be incorporated in the burgh of Glasgow, form together a cordon round the burghs of Crosshill and Govanhill. This will have the effect of cutting these burghs off from the counties with whose police system they are respectively connected. Crosshill is policed by the county of Renfrew, from which it will be entirely cut off; therefore, in case of riot the burgh of Crosshill would have either to make a moral claim upon the police of Glasgow, or to go through the Glasgow district before they could get the aid of a single policeman. The case of the *Glasgow Municipal Extension Bill* (2 Clifford & Rickards, 97), against which the present petitioners were refused a *locus standi* last year, differed from this

There was no case of insulation there. With regard to the case of Govanhill the petition makes the same allegations as that of the commissioners of Crosshill. This will also be a case of insulation, and they allege that they have spent a large sum of money in erecting a police office, cells, and dwelling houses for the constables. Moreover, if the bill passes, the remainder of the district will be injuriously affected by the loss of rating, which would follow from abstracting a portion of Lanarkshire, with whose police system the petitioners are connected, and the efficiency of the police force will be prejudicially affected. We are also entitled to a *locus standi* on account of proceedings which are pending under the Public Act for the purpose of annexing a district in which we now provide police, and which the promoters are also seeking, under the bill, to incorporate into their burgh. We are, therefore, practically promoting competing schemes, and as such we are entitled to a *locus standi*. (*Glasgow Corporation (Municipal Extension) Bills*, 2 Clifford & Stephens, 234.) Then with regard to roads, the bill places under the jurisdiction of the promoters roads now under the county, and continuous with roads in our district.

Pope, Q.C. (for promoters): As to the roads, the commissioners of supply petition against the bill and represent the district. As to the question of police, the bill authorises us to absorb two districts at present outside our limits so as to include a part, which is our own property, but which happens to be beyond our jurisdiction. With regard to Crosshill, the whole grievance is this, that if a policeman at Crosshill wanted assistance to quell a riot, he would have to pass across a park belonging to the corporation of Glasgow to get to the county, and although there is nothing to bind the police of Glasgow to act in aid of the police of the burgh of Crosshill, as a matter of friendly feeling they would. The burghs of Crosshill or Govanhill have no separate police of their own, and any question as to police rates affects the commissioners of supply of the counties of which they are respectively a part and not the present petitioners.

The CHAIRMAN: You need not address us any further upon the case of the burgh of Crosshill. With regard to Govanhill you can confine your arguments to the point that the magistrates of Govanhill have, as they allege, commenced proceedings to incorporate part of the same district that you take power to incorporate.

Pope: It is not enough to manufacture a claim giving a colourable *locus standi*, but the Court must be satisfied that there is a *bond fide* claim *sub judice*. The facts are, that about two years

ago, when Govanhill was made into a police burgh, its authorities claimed to include within its limits the piece in question, and the sheriff acceded to their demands. That decision was afterwards reversed by the Home Secretary, and now, on the 27th February, the day after the second reading of the bill, they again refer the matter back to the sheriff, nominally to get the Home Secretary's decision reversed, but really to give them a colourable ground for a *locus standi*.

The CHAIRMAN: We think the commencement of the proceedings for the annexation of this piece of ground was not *bond fide*. The *locus standi* of both sets of Petitioners is *Disallowed*.

Agents for Bill, *Simson & Wakeford*.

Agent for Petitioners, *Robertson*.

GRAND JUNCTION CANAL BILL.

Petition of (1) WILLIAM HENRY BUTT (SIGNING THE PETITION OF THE DUKE OF LEEDS AND WILLIAM HENRY BUTT); (2) EDWARD JOHN COLEMAN AND OTHERS.

12th May, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Canal—Owners, Occupiers, &c.—Property not Compulsorily Taken—Amenities Injuriously Affected—Inhabitants of District—Definition of District—Representation—Road Surveyor—Right of, to be Heard Against Interference with Roads—Lord of the Manor—Practice—Transfer of Signatory from one Petition to Another—Injury, Allegations of, to Persons not Signing Petition—Insufficiency of Allegations of Petition.

A bill for making a branch canal was opposed by certain petitioners who signed as owners and occupiers of property in the immediate vicinity of the proposed canal, and who objected that, by the construction of the canal, the value of their property would be deteriorated, and the neighbourhood rendered less desirable for residential purposes. A few of them petitioned as landowners, whose property would be compulsorily taken under the bill, and their *locus standi* as landowners, as well as that of the road surveyor of the district as such, was not

disputed. The petitioners generally claimed to be heard as constituting, almost without exception, the inhabitants of a district through which the proposed canal would pass; but it was shown that they were not the local authority of the district, that the portion of country they claimed to represent was not in fact a district in any technical or legal sense of the term:

Held, that (with the exceptions mentioned) the petitioners were not entitled to a *locus standi* against the bill.

(*Per Cur.*) "A district" must be taken to mean either a district under local authority, or at any rate a district with some tangible limits, and not merely a portion of country arbitrarily so called for some special purpose.

In the case of an independent petitioner who claimed to be heard as an owner in the vicinity of the canal, the value and amenities of whose property would be injuriously affected by the bill, the Court disallowed the *locus standi* without calling on the counsel of the promoters to reply.

(*Per Cur.*) A petitioner cannot be transferred from one petition to another. He must stand or fall upon his own petition.

The *locus standi* of William Henry Butt was objected to, because (1) he is not an owner, lessee, or occupier of any land, &c., to be taken compulsorily; (2) he is not the municipal, sanitary or other authority having the local management of the district alleged to be injuriously affected by the bill, nor is he entitled alone or in conjunction with his co-petitioner, the Duke of Leeds, to represent the inhabitants of that district; (3) he is not the surveyor of highways for any of the parishes through which the proposed new canal will pass, nor has he the management of the highways or public roads in any of those parishes, nor has he any right to object to any interference with such highways or roads; (4) the petition discloses no facts or reasons entitling the petitioners to be heard according to practice.

The *locus standi* of Edward John Coleman and others was objected to, because (1) they are not owners, &c., of lands, &c., proposed to be compulsorily taken; (2) the petitioner, Edward John Coleman, has not, as lord of the manor in the parish of Stoke Pogis, in the county of Buck-

ingham, such an interest in any of the lands or other property proposed to be taken compulsorily under the powers of the bill as entitles him to a *locus standi*; (3) on similar grounds to those stated in 2nd objection against petition (1); (4 and 5) on similar grounds to those in 3rd and 4th objections against petition (1); (6) Granville Sykes Howard Vyse and Maurice Charles Merltius Saxbey, not having signed the petition, either by themselves or their attorneys, have no right to be heard against the bill.

Little, Q.C. (for William Henry Butt, signing the petition of the Duke of Leeds and W. H. Butt): The petitioner is an owner of property in the neighbourhood of the proposed canal, although it cannot be urged that he is an owner or occupier of land to be taken compulsorily under the powers of the bill. He proposes, however, to add his name to the number of inhabitants signing the other petition.

The CHAIRMAN: We cannot transfer him from one petition to the other; he must stand or fall on his own petition. As a single individual, whose property is not touched, he is not entitled to a *locus standi*.

Little, Q.C. (for E. J. Coleman and others): All the petitioners are inhabitants of the district traversed by, or in the immediate neighbourhood of the new canal, and we allege and are prepared to prove that the district will be most injuriously affected by the bill.

Pember, Q.C. (for promoters): A few of the petitioners are owners whose property will be compulsorily taken under the powers of the bill. We are prepared to concede their *locus standi*, and also that of Henry Seward Cantrell, who signs as an occupier and surveyor of highways, in his official capacity as the road surveyor of the district. We dispute the *locus standi* of all the other petitioners.

Little: Our petition goes on to state that our property and the vicinity will be disfigured by the erection of the proposed works, and consequently deteriorated in value, and the neighbourhood spoilt for sporting, and social, and residential purposes. The petition then gives a detailed account of the injury which the various petitioners, beginning with Mr. Coleman, as lord of the manor, will sustain. Their district is one in which there is no local authority of any sort, who might petition, and show how the district would be injuriously affected.

Mr. BRISTOWE: Is there no rural sanitary authority?

Little: The board of guardians are the rural sanitary authority for the whole union, but as a matter of practice they do not appoint any sanitary committee for a place unless it is big

enough to want one, and they have not appointed one here. The petitioners represent the whole of the inhabitants (with the exception of one gentleman) within a mile and a-half of the portion of the line of canal that will inflict the injury on the district. This particular district is where the brickfields will be, when the canal is made, and does not include the part where the canal goes on viaduct, or in cutting, but is the part really injuriously affected. I refer in support of my argument to the cases of the *South-Eastern and London, Brighton, and South Coast Railway Companies Bill* (1 Clifford & Stephens, 149); *Cobham Railway Bill* (*Ib.*, vol. 2, 57); *Midland Railway Bill* (*Ib.*, 108).

Mr. RICKARDS: Is it competent for a few landowners, some of whom have their property, and others their comfort interfered with, to claim a *locus standi* as representatives of the inhabitants of a district generally?

Littler: This is an injury that will affect the whole district, and diminish the rateable value of the property, and there is no local authority in this particular part to represent the public interests of the district. With regard to Mr. Coleman, he has a right to be heard as lord of the manor.

Pember, Q.C. (in reply): There is no technical definition of a district. Here sixteen petitioners create a district for their own purposes, and utterly ignore the juxtaposition of the whole town of Slough. They called no public meeting to ascertain the feelings of the inhabitants of the district properly so called, and their interests are different, and merely those of individuals.

Mr. BRISTOWE: They make a common objection in respect of the drainage question and interference with the roads.

Pember: Private individuals have no concern with the roads, which in this case are under the surveyor of highways, and to his *locus standi* as surveyor, we raise no objection. This is not a district at all, and if it were, the petitioners do not represent it.

The CHAIRMAN: But for the decisions, I should have been inclined to put a wider interpretation upon the word "district," than a district necessarily under the authority of a local board. I should have thought it meant a neighbourhood.

Pember: The petitioners cannot be regarded as standing in the same position as a local board. In the case of the *Cobham Railway Bill* (1 Clifford & Stephens, 57), the counsel to the Speaker said, "the Referees have generally interpreted the word 'district' to mean a district under local management."

Mr. RICKARDS: I did not mean to say that I should hold that in no case could there be a

district which was not under local management, but that it must be a district with some tangible limits; that you cannot carve out a particular area within a certain circumference and say, that is a district, a majority of the inhabitants within which are in favour of, or in opposition to, the bill.

The CHAIRMAN: Supposing every soul within a quarter of a mile on each side of the whole five miles' length of this canal signed a petition against the line, would you allow they were inhabitants of the district?

Pember: Yes, I should be disposed to admit that, but here they are a few persons along a short portion of the proposed canal. With regard to the case of Mr. Coleman, the lord of the manor, he does not anywhere specifically allege how his manorial rights are interfered with. (*Bradford Water Bill, on the Petition of W. Ferrand*, 1 Clifford & Stephens, 41; *North Metropolitan Tramways Bill*, 2 Clifford & Stephens, 89; *Birmingham Sewerage Bill, on the Petition of Berkeley Plantagenet Noel*, *Ib.*, 232; *Kingston-upon-Hull Docks Bill, on the Petition of Sir Clifford Constable*, 2 Clifford & Rickards, 109; *Bute Docks Bill, on the Petition of W. S. Cartwright*, Smethurst, 2nd Ed., 93.)

The CHAIRMAN: I think the cases establish that a lord of the manor must specifically show how his rights are interfered with. We disallow the *locus standi* of all the Petitioners except those whose *locus standi* is not objected to, being the landowners whose property is compulsorily taken, and the surveyor of highways in the district, who will be heard only on his allegation as to the injurious affecting of the roads.

Pember: The petition sets out the grievance of two persons who do not sign it at all, and under these circumstances their grievance ought not to come before the Committee of the House.

Mr. RICKARDS: There will be no difficulty about that, as under the rules of the House no petitioner can be heard unless he has signed the petition, and the paragraphs referred to will therefore go for nothing.

Agent for Petitioners (1 & 2), Rees.

Agents for Bill, Grahames & Wardlaw.

GREAT EASTERN RAILWAY BILL.

Petition of METROPOLITAN BOARD OF WORKS.

27th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; and Mr. RICKARDS.)

Railway Hotel—Metropolitan Board of Works—Metropolis Building Act, 1855, Interpretation of—Buildings used under Statute for Purposes of Railway—Exemption of, from Control of Metropolitan Board.

By section 6 of the Metropolis Building Act, 1855, buildings used for the purposes of a railway under the provisions of any Act of Parliament are exempted from the control of the Metropolitan board of works. The Great Eastern company promoted a bill, authorising them to build, provide, and maintain an hotel as part of their undertaking at, or connected with, their Liverpool-street station. The Metropolitan board asked to be heard against the bill, with a view to the insertion of a clause (similar to clauses which had been inserted in other railway Acts) expressly subjecting the hotel to their supervision, on the ground that the above exemption would otherwise apply, and that the Legislature never intended that such a building as an hotel should come within it :

Held, that the Metropolitan board had no *locus standi*, the Court being of opinion that, in spite of the anomaly in the existing law, they were not called on to narrow the construction and effect of the Metropolis Building Act, which the bill did not interfere with.

The *locus standi* of the petitioners was objected to, because (1) the proposed hotel will be part of an adjunct to the station of the company, and will be built and used for the accommodation of persons using the Great Eastern railway, and the powers conferred upon the petitioners by Act of Parliament do not extend to give them any right, jurisdiction, or power with respect to buildings of that character; (2) the petitioners have no interest in the subject matter of the clause which entitles them to be heard upon their petition against it, consistently with practice.

Cripps, Q.C. (for the Metropolitan board): The bill empowers the Great Eastern company to build this hotel, and either to manage and conduct it or demise it, and we say there should be a clause subjecting the hotel buildings to the provisions of the Metropolis Building Act, 17 & 18 Vict., c. 122. That Act (Part I., section 6) exempts from its operation "the buildings belonging to any canal, dock, or railway company, and used for the purposes of such canal, dock, or railway, under the provisions of any Act of Parliament." Railway companies rightly contend that this exemption applies to any of their buildings, wherever situated in London, if held under Act of Parliament. Last year, in the *London and North-Western Additional Powers Bill*, one object of which was the acquiring of premises for offices, it was provided that such premises should continue subject to the provisions of the Metropolis Buildings Act, and a similar condition, upon the opposition of the Metropolitan board, was inserted in the *South-Eastern Company's Act*, by which they sought to acquire land around their Charing Cross station. This year also we presented an identical petition against a bill promoted by the Chatham and Dover railway company, and they have not objected to our *locus standi*. Supposing the Great Eastern in this case had chosen to let their land on condition that the lessee should build an hotel, it would have been subjected to the Buildings Act, and the only way by which the company receive the benefit of the exemption is by obtaining a special Act. When the Metropolis Building Act was passed, an hotel was not in the contemplation of the Legislature, and we must take care that railway companies do not get this power by means of a special Act.

Mr. RICKARDS: The bill does not propose to alter the existing law. If the hotel comes within the exemption already provided for by statute, it will enjoy that exemption, but not otherwise?

Cripps: It can only enjoy the exemption if built under the authority of a special Act, and we oppose the attempt of the company thus to relieve themselves from the provisions of the Building Act. There is no building where regulations are more necessary for the public safety, in case of fire, than in an hotel. The case of the *Midland Railway (Additional Powers) Bill* (2 Clifford & Rickards, 45) is not in point, as the company there merely sought to buy land.

Mr. FORSYTH: And your jurisdiction did not apply till they proposed to do something with the land.

Pember, Q.C. (for the promoters): The question whether this case is within the purview of the

General Act is a question for a court of law. It is said that this is an hotel, and therefore peculiarly requires regulations to prevent the spread of fire. But there is no magic in an hotel. If we had proposed to build a wool warehouse, to be used in connection with the railway, no building would have been more liable to fire, and yet that would have been exempt from the operation of the Act. Because they catch us in Parliament the Metropolitan board think they are entitled to try to take away from us the benefit of this exemption. So they might be if we were going to interfere with the jurisdiction they are entitled to under statute. But we do not, nor do we alter their *status* in any way. We are not going to take this building out of one class and put it in another. The question is not what class it will belong to before it is built, but what class it belongs to after it is built; and that is not a question for Parliament, but for a court of law. If the bill sought to define what Parliament meant when it said "buildings belonging to a company, and used for the purposes of a railway," that is to say an hotel, I admit the petitioners would have a *locus standi*, because we should then be doing what it is for a court of law to do, namely, interpret an existing statute, and we should be precluding the Metropolitan board from discussing the question in a court of law.

Mr. RICKARDS: The only words in the bill (clause 28) which seem to prejudge the matter, are the words authorising the building of the hotel by the company "as part of their undertaking."

Pember: In the first place "undertaking" is not the word used in the Metropolis Building Act, which says that the building must be "for the purposes of the railway," and, in the second place, we merely use the words "as part of their undertaking," so that we may not be open to the objection that an application of the company's funds to this purpose is *ultra vires*. As to the cases cited in which other companies submitted to clauses bringing them within the Building Act, my answer is that even supposing these cases to be on all fours with this, the companies in question were ill-advised. In the *North-Western* case, the company's premises were in St. Martin's-lane, a long way from their station, which is a very different case to this, where we propose to build on our own station-land.

Mr. BRISTOWE: If the company let this land to a private person, and he builds an hotel, it will be subject to the supervision of the Metropolitan board; if the railway company build the hotel themselves it will not be.

Pember: If there is any apparent anomaly arising out of the Metropolitan Building Act, I

cannot help that. Let Parliament remove this anomaly if it pleases by words in some other General Act, but meanwhile do not allow the Metropolitan board to deprive us of a benefit which Parliament has given us.

The CHAIRMAN: The *locus standi* is disallowed. We think it is a mere question of the interpretation of the Metropolis Building Act which the bill does not in any way interfere with.

Locus standi Disallowed.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Dyson & Co.

GREAT NORTHERN RAILWAY (IRELAND) BILL.

Petition of (1) HOLDERS OF ARBITRATION B AND B DEBENTURE-STOCK OF THE NEWRY AND ARMAGH RAILWAY COMPANY.

19th & 23rd June, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railway—Purchase of—Award Having Force of an Act—Debenture Holders—Rights of, as to Attending Meetings and Voting—How far Status as Creditors Affected Thereby—Promotion of Bill—Assents of Different Classes of Stockholders—Representation—Distribution of Purchase Monies—Legal Priorities—Alteration of Scheme in Second House—Permissive Purchase Made Compulsory—Purchase Monies Allotted—Meetings to Consider Bill—Advertisements and Notices—Failure to Attend or Dissent—S. O. 131-132 (as to Dissentient Shareholders), Construction of—Distinct Interests—Creditors and Shareholders; Same Petitioners held to be both.

A bill was promoted by the Great Northern (Ireland) railway, *inter alia*, to enable them to purchase compulsorily the undertakings of two other companies. One of these, the Newry company, had been reconstituted under an award, having the force of an Act of Parliament, in 1871, and the petitioners, who were debenture-holders in class B of the debenture-stock created by that award, objected to the terms of purchase as unfairly prejudicing their interests. Under the award

the capital of the company consisted of—preference debenture-stock; A debenture-stock; arbitration B debenture-stock, and B debenture-stock, ranking together; and of arbitration ordinary stock. The award specially provided (by article 31) that the holders of arbitration debenture-stock should be entitled to be present in person, or by proxy, at meetings of the company, and to vote thereat; (article 32) that for the purposes of certain sections of the Companies' Clauses Act, 1845, and of any S. O. of either House of Parliament, holders of arbitration debenture-stock should be deemed shareholders or proprietors of the company, and arbitration debenture-stock should be deemed paid-up capital of the company; (article 33) that the right of being present at the meetings of the company and voting thereat should not take away, abridge, or prejudicially affect any of the rights or powers to which holders of arbitration debenture-stock would have been entitled in case such right of being present and voting had not been given to them; and (article 37) that any bill in Parliament, promoted in the name of or affecting the company, should not be deemed to be approved by the company, unless it had been submitted to a separate meeting of each of the three classes of holders of arbitration-stock specially convened for the purpose, with notice of the object of the meeting, and had been approved of at each of these meetings by the majority of the votes of the stockholders present personally or by proxy thereat. The bill, as the consideration for the transfer, allotted to and among the different classes of stockholders in the Newry company, £165,000 4 per cent. debenture-stock, and £45,000 ordinary stock of the purchasing company, distributed in specified proportions; the acceptance of which was obligatory in all cases. The petitioners, representing £15,000 of arbitration B and B debenture-stocks, complained that they were deprived of the full payment to which they were entitled, with the object of leaving a fund to satisfy the ordinary shareholders. They also alleged that the different meetings had not been properly convened; but on this latter point the

Referees (after hearing evidence) expressed themselves satisfied. The promoters objected that under the terms of the award, the petitioners were shareholders of the company for all "purposes of the S. O.," and therefore of *locus standi*, and that, the bill having been unanimously sanctioned by meetings of all classes, at none of which had the petitioners attended or dissented, they had no claim whatever to be heard:

Held, however, after much argument, that on the true construction of the award, the petitioners were both creditors and shareholders, and that from one point of view, their property was to be regarded as taken compulsorily, whilst from the other, they had a distinct interest.

The *locus standi* of the petitioners was objected to, because (1) they were not creditors of the Newry company as alleged; (2) by virtue of the award they were for all purposes of the S. O. to be deemed shareholders in that company; (3) the bill had been submitted to the proprietors of the Newry company at a meeting specially called in pursuance of S. O. 64, and approved unanimously; (4) none of the petitioners had dissented at that meeting; (5) separate meetings of the three classes of arbitration stockholders had likewise been held, of which petitioners had due notice, and at none of these did they attend or dissent; (6) absence of notice, even if this were true, would be immaterial in the case of these meetings, which were held, not under the S. O., but under the award; (7) notice of such meetings had in fact been sent to each stockholder, and they were accordingly bound by the unanimous vote arrived at; (8) no sufficient ground was shown according to practice.

Pembroke Stephens (for petitioners): This is a bill for compulsory sale and distribution in fixed proportions of the purchase-money of the undertaking of the Newry company. As originally introduced, in the House of Lords, the bill merely provided for a sale of the undertaking by agreement between the companies, and for the application of the purchase-money in strict accordance with the legal priorities. With the bill in its earlier shape we were perfectly satisfied; but, as now altered, it confiscates a portion of our property, compelling us, for the benefit of the ordinary shareholders, to accept less than the value of our debentures. It is not that the purchase-money is insufficient

to pay us 20s. in the pound, but the promoters have chosen to make an arbitrary deduction. We are left no option in the matter, but are compelled to take so much stock in another company, in place of payment in cash. And the question is, whether compelling us to accept part payment against our will does not give us a *locus standi*? The objection taken is a highly technical one—that we are shareholders, not creditors, and they quote against us articles 31 and 32 of the award, which supply the machinery for our coming together and expressing an opinion, but omit all reference to article 33, which preserves our rights as creditors intact. It is part of our case that the meetings required by the award, which has the force of an Act of Parliament, have not been duly held.

The CHAIRMAN: Is not that a question for the examiner?

Stephens: No; he only takes notice of requirements under the S. O.; this is a condition imposed otherwise.

[Pember, Q.C. (for the promoters) called a director of the Newry company who proved that the several meetings, whether required by the S. O., or the award, had been held on the 9th April, 1879; and, further, that notice of the objects of such meetings had been sent to the stockholders individually, informing them of the intention to alter the bill. In cross-examination the witness added that although the company was an Irish one, the meetings had all been held at the company's offices in London, each meeting beginning a quarter of an hour after its predecessor. A notice and a proxy paper were sent to each person interested, but the notices were not all copies of each other, or of the advertisement, and some might not have referred to the altered bill. Out of £90,000 arbitration B and B debenture stockholders, in value, £68,741, attended, or sent proxies and assented. The Act of Parliament required notice in the newspapers simply; the individual notices had been sent *ex abundante cautela* under the award; and as every debenture-holder was regarded as a shareholder, he ought thus to have received notice in both capacities.]

The CHAIRMAN: We are of opinion that the petitioners had ample notice.

Stephens: Still, the other point holds good. Whether the petitioners received notice or not, their rights, as creditors, are affected by the bill. They do not admit that they are shareholders in the sense contended for by the promoters, but if they are shareholders in any sense, they ought to have the benefit of S. O. 131, their interest being clearly distinguishable from that of the company.

Mr. RICKARDS: Which ground do you stand

upon; that you are a creditor, and that your rights as such will be affected, or that you are a shareholder, belonging to a distinct class?

Stephens: We are shareholders, but only for certain purposes. We are creditors whose rights are preserved by the award.

Mr. RICKARDS: Do you contend that S. O. 131 applies to creditors?

Stephens: In principle it applies to any one with a distinct interest. If we are to be shareholders for all the purposes of S. O., that must include S. O. 131. But the same award that gives us this right, expressly preserves our previous rights as creditors.

Mr. RICKARDS: Then in fact you say you are both creditor and shareholder? You stand on both grounds?

Stephens: In this particular case we do. Shareholders are allowed to appear against the seal of the company if they can say that the bill will affect them diversely from the way in which it will affect other shareholders. (*Glasgow and Kilmarnock, &c., Bill*, 2 Clifford & Stephens, 259.)

Pember, Q.C. (in reply): The petitioners do not venture to allege that they are shareholders; they describe themselves as creditors throughout the petition, and they cannot now fortify their position by taking up a new line of argument. These gentlemen must either be creditors or shareholders; they cannot be both.

Mr. RICKARDS: Would there be any inconsistency in a holder of arbitration debenture-stock being a shareholder for the purpose of *locus standi* under S. O. 131?

Pember: I think so. But the real question is, what did the framers of the award mean when they defined so expressly what the incidents of this debenture-stock were to be? There might be other capacities in which a holder of this stock could properly be regarded as a creditor, but he ceases to be a creditor for all purposes of the S. O., and becomes simply a shareholder. As far as this tribunal is concerned, his character of creditor is merged in that of shareholder.

Mr. RICKARDS: Originally, he was a creditor; and supposing this award not to have existed, he would *prima facie* have had a *locus standi* to be heard against a bill which effected a composition of his debt, and altered his position. Then, by article 32 of the award, he was invested, for the purposes of the S. O.—although only a debenture holder—with the character of a shareholder, and on that ground, as it seems to me, he might claim to be heard under S. O. 131, as being a shareholder with a distinct interest from the rest of the company. I look upon him as a creditor-shareholder — a creditor-plus.

shareholder; he is not made a shareholder generally, but for the purposes of the S. O. and of the Companies Clauses Act, 1845, he became so.

Pember: If he is a shareholder for the purpose of every S. O., how can he be a creditor for the purpose of one particular S. O.?

Mr. RICKARDS: That is what the award says. A. B. is a creditor, and is not to lose his rights as such; but A. B. is also for the purposes of certain S. O. to be deemed a shareholder.

Pember: To me it seems that for all purposes of Parliamentary enquiry, the position of those holders of arbitration debenture-stock is fixed by the instrument creating it, and they cannot escape from that. As to the S. O. and their application, S. O. 131 applies to individuals and S. O. 132 to classes of shareholders. We have it clearly that none of these petitioners have a grievance, otherwise than as members of a class, yet none of them attended any meeting, or dissented.

Mr. RICKARDS: We have held that preference shareholders may have separate interests from the ordinary shareholders of a company, when such interests are capable of being out-voted or sacrificed.

Pember: But that danger cannot arise here. Reading together Articles 32 and 37 of the award, it is plain that no bill affecting the Newry company can be promoted until it has received the assent of meetings of every class of stock in the company. The time for these people to object was at the meeting of their own class. They have not done so, and they are now estopped by the unanimous votes of these meetings—by the machinery which the award itself provided.

Mr. RICKARDS: You contend that S. O. 131 must be regarded as not operating in a case where the interest which is distinct from the company is protected by a provision for the special representation of that distinct interest?

Pember: Undoubtedly. The bill could never have gone on unless all these classes had assented to it, and S. O. 131 is not required for their protection. There is this further point: the bill is promoted by the Great Northern company, not by the Newry company, and there can accordingly be no interest distinct from that of the company as S. O. 131 requires. My answer to S. O. 132 is that they have not dissented.

Mr. RICKARDS: Supposing the London and North-Western company were to bring in a bill providing that the interest on a class of debenture-stock in another company should be abated 10 per cent., would not a holder of that security be entitled to be heard?

Pember: These people are not strangers to the proposal, in the same way as in the supposed case of the London and North-Western company.

They, or their fellows, have already assented to the bill. If the petitioners are to have all the advantage of being shareholders, plus any existing rights as creditors, they derive all the benefits without any of the liabilities of the position.

Mr. RICKARDS: The question is not what is reasonable or equitable, but what the two clauses of the award mean?

The CHAIRMAN (after deliberation): The Referees are of opinion that the petitioners are entitled to a *locus standi*.

Locus standi Allowed.

Agents for Petitioners, *Holmes, Anton, & Greig.*

Petition of (2) BELFAST CENTRAL AND FURNESS RAILWAY COMPANIES; (3) BELFAST CENTRAL, AND MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY COMPANIES.

Railway Amalgamation—English and Irish Companies—Cross Channel Traffic—Apprehended Diversion of—Through Route, of What Composed—Steamers Integral Portion of—Harbour Railway—How Far Necessary Link in Chain—Joint Petitions—Cross Channel Routes—Interest of Different Companies in—Previous Amalgamations—Facility Clauses—Alteration of Bill in other House—Limited Locus "Against" a Clause—How to be Interpreted—Practice—Petitioners Joining in Two Petitions.

A bill promoted by a railway company in Ireland, for the purchase and absorption of two other railway lines, was opposed by two English companies and one Irish company, the latter not petitioning separately, but joining in each of the petitions presented by the English companies. The English companies passed in review the different competitive cross-channel routes and services, and contended at much length that the effect of the bill, by concentrating power in the hands of the promoters, would be to divert traffic from the port of Belfast, in which they themselves were interested, to the port of Greenore, where their rivals, the London and North-Western railway were established, and exercised a predominating influence. The promoting company had interests both at Belfast and Greenore, and it

was alleged that the extra mileage of the lines acquired under the bill would just turn the scale. The Irish company were owners of a short harbour line at Belfast, and represented it as a link in the chain; but their *locus* had been disallowed in the House of Lords. The English companies had not previously petitioned, but in the House of Lords a clause was added to the bill, in the interest of the London and North-Western railway company:

Held, as regards the English companies, that they might be heard against the clause in question, not merely in the strict sense of the word "against," but generally, and with a view to its extension, modification, or rejection, as they might think fit. As regards the Irish company, their *locus standi* was again disallowed (apparently on the ground that their railway was a purely local line, having no junction, connection, or agreement with the lines absorbed), but the Court refused to hold that there was any objection, in point of form or of convenience, to the course taken by them of petitioning (in duplicate) with their allies.

The *locus standi* of the Belfast Central, and Manchester, Sheffield, and Lincolnshire railway companies was objected to, because (1) the first fifteen paragraphs of the petition may be reduced to the following propositions: (a) the Belfast Central company are interested in the conveyance of cross channel traffic between England and Ireland to and from Belfast; (b) this traffic is mainly consigned to, or arises on, the railway of the promoters, who ought to use the Belfast railway for its transmission, but abstain from doing so in "breach of arrangements" between them and petitioners (par. 8), which arrangements the petitioners are taking proceedings to enforce (par. 13); (c) Newry is a port which competes with Belfast, and if the promoters acquire the Newry and Armagh railway it will be their interest to encourage Newry at the expense of Belfast, and so diminish traffic which the petitioners would otherwise convey (pars. 13 & 24); (d) while the Newry and Armagh railway is independent, it competes for traffic with the railway of the promoters, and hence the promoters charge low rates between Belfast and Armagh, which rates will be increased when competition ceases. The petitioners are interested in the maintenance of these low fares, much of

their traffic being Armagh traffic (par. 10); (2) the Newry and Armagh railway is at its nearest point more than 30 miles distant from the Belfast Central railway; the petitioners do not allege that they have any interest in the Newry and Armagh railway, or that they use it or have any contracts affecting it, or that their position will in anywise be altered by the transfer, excepting that traffic may resort to Newry, which, but for the transfer, would use the port of Belfast, and which the petitioners might convey when certain works at Belfast are constructed (par. 8); (3) the promoters submit that a conjecture so improbable as the superseding of the port of Belfast in favour of the port of Newry, and the supposed injury which may befall the petitioners, if that conjecture should be fulfilled, affords to the Belfast central company no right to be heard against the transfer to the promoters of the Newry and Armagh railway; (4) the promoters are advised and allege that there is in the first fifteen paragraphs of the petition nothing on which a right to be heard against the bill can be founded; (5) paragraphs 16 to 25 are founded on the 18th clause of the bill, which extends to the Newry and Armagh railway certain provisions contained in the Great Northern Railway (Ireland) Acts, passed in the year 1877, with respect to cross channel traffic. Those provisions date from the year 1874, and require that the promoters and the London and North-Western company shall afford to each other over the whole of their systems mutual facilities for the transmission of cross channel traffic; (6) the 19th par. states that the Manchester, Sheffield, and Lincolnshire railway company had for many years past had a considerable cross channel traffic, mainly arising on the railway of the promoters, or handed over to those railways, and they apprehend (par. 20) that the power conferred upon the two companies (*viz.*, the promoters and the London and North-Western company) may create a monopoly in favour of the last-named company for traffic between England and the north of Ireland to the detriment of the petitioners. The promoters submit that this apprehension is far too vague to give to the Manchester, Sheffield, and Lincolnshire railway company a right to be heard; (7) par. 24 of the petition repeats the apprehension lest the effect of the transfer of the Newry and Armagh railway company should be that Newry should supersede Belfast. But the Manchester, Sheffield, and Lincolnshire railway company do not show how this process will injure them; (8) excepting these conjectural grievances the promoters can find in the petition nothing upon which the petitioners can claim a right to be

heard; (9) the petition contains no specific allegations against the provisions of the bill for the transfer of the Dublin and Antrim junction railway to the promoters.

Similar objection was taken to the *locus standi* of the Belfast Central and Furness railway companies.

Pope, Q.C. (for Belfast Central and Furness companies): We claim a *locus standi* on the ground that this amalgamation will create a different and distinct interest on the part of the Great Northern of Ireland company to that which now exists, and that the effect will be to divert north of Ireland traffic to England from the Belfast route, in which we are interested, to the Greenore route, in which we have no concern. The Great Northern company by the bill propose to amalgamate with themselves the Newry and Armagh line; they also amalgamate the branch running along the banks of Lough Neagh, starting from Lisburn and terminating at Antrim. The Belfast Central railway is a line forming a junction with the Great Northern of Ireland in Belfast, and having communication with the quay at Belfast, and accordingly forms a short link in the railway communication between the Great Northern of Ireland and the shipping port of Belfast. Between the north of Ireland and England there are three or four routes, and although the Irish Channel intervenes, legislation has so incorporated the steam and railway routes, that for all practical purposes the steam route may be regarded as the railway route, inasmuch as the steamboats belong to the railway company. The most northerly route is that from Larne to Stranraer, where it comes in communication with the Caledonian and London and North-Western. Between Belfast and England there are three routes: one by means of the steamers to the Furness railway at Barrow, where the Midland system is reached; one from Belfast to Liverpool, where there is communication, not only with the Midland but with the Manchester, Sheffield and Lincolnshire; and one, of which the London and North-Western are joint owners with the Lancashire and Yorkshire, between Fleetwood and Belfast. South of Belfast comes the Greenore route. The Dundalk and Greenore, and the Newry and Greenore railways, in which the London and North-Western and the Great Northern of Ireland companies have a pecuniary interest, converge at Greenore, and from thence to Holyhead there is the new service of London and North-Western steamers. Further south again, you have the service between Kingstown and Holyhead, and Holyhead and North Wall, Dublin, in the hands of, or in close connection with, the London and

North-Western company. Accordingly, the traffic from Armagh may pass at present either in the hands of the Great Northern of Ireland, *viâ* Belfast, to the Furness railway, or the Manchester, Sheffield, and Lincolnshire railway, or the London and North-Western railway on the English side, or it may pass *viâ* Newry, and along the Dundalk and Greenore railway to the London and North-Western to be distributed by them in England. It is not the interest of the Great Northern of Ireland, as matters stand now, to send its traffic arising at Armagh over the line of the Newry and Armagh, which is an independent company, but by way of Belfast, because by that route it gets the whole of the traffic itself; and, once at Belfast, there the Belfast Central is a link in the chain of communication, the route to England being composed of the Great Northern of Ireland, the Belfast Central, the steamers, the Manchester, Sheffield and Lincolnshire, the Furness, the Midland, or any of the English companies.

Pember, Q.C. (for promoters): We deny that the Belfast Central is necessarily any part of the route.

Pope: What alternative can there be? The promoters cannot deny that the Belfast Central are the only railway that would take the traffic to the docks where it could be shipped on board the steamers, but they say "we can take it to our own terminus and cart it through the streets. If, instead of being a railway you were a combination of carters, you might be heard, but you cannot be heard because you are a railway company." Is this reasonable? It is plain that if you allow the Newry and Armagh to be absorbed, you give to the Great Northern of Ireland a very different interest in the port of Greenore from that which they possess now. The Belfast Central forms a link in the railway communication—it is necessarily interested therefore in the transit of all the traffic that can be brought to the port of Belfast—just as the Furness company is interested on the other side of the water. The Great Northern of Ireland when it was called the Irish North-Western became bound jointly with the London and North-Western to guarantee a certain dividend to the Dundalk and Greenore railway. At present, though there is in the Great-Northern of Ireland a certain interest to send traffic over the Dundalk and Greenore, even from Newry, it is counterbalanced by the fact that from Armagh to Belfast they have got the greater mileage of the traffic; and therefore though they may wish to turn a good deal of it over to the Dundalk and Greenore, some of the traffic by the interest of the company finds its way to Belfast. If they became possessors of the

Newry and Armagh, they would have an additional motive to send traffic by way of Greenore instead of sending it by way of Belfast. The matter does not end there, for the Great Northern are the inheritors of very special provisions imposed by Parliament on the Irish North-Western in favour of the Greenore route. By the London and North-Western (England and Ireland) Act, 1874, an agreement was sanctioned by sections 58 and 59 by which the three companies, that is, the Irish North-Western, the Dundalk and Greenore, and the Newry and Greenore (the London and North-Western in point of fact), made traffic arrangements, binding them to afford mutual facilities. So that there does exist, sanctioned by Parliament, a distinct interest on the part of the companies to promote traffic by way of Greenore. We were heard upon that agreement, and the matter was adjudicated upon by Parliament according to the then *status quo*. But now the Great Northern of Ireland come to absorb that which hitherto has been an independent company, interposed between Armagh and Newry and Greenore, and if they get the Newry and Armagh it will then be to the interest of the Great Northern of Ireland in all cases to prefer the port of Greenore to the port of Belfast. If you add the Armagh and Newry mileage to the Newry and Greenore mileage, they will get from their common point Armagh nearly as long a division of the through rate for the Greenore traffic as they have for the Belfast traffic, whereas, at present, that independent company which takes a portion of the through rate being interposed, they have only the Newry and Greenore interest as opposed to the longer mileage between Armagh and Belfast. We say the Great Northern of Ireland are seeking by this bill to form the Newry and Armagh into a portion of the through route from Armagh, with a distinct interest in the direction of Greenore, and inasmuch as the Belfast Central, in connection with the Furness, form part of a competitive route between Armagh and England, the principle should be here adopted which has usually been followed by Parliament in amalgamation cases—that an independent line is not to be absorbed by a company so as to alter the interest in the competitive route without allowing those interested to be heard.

Littler, Q.C. (for Belfast Central and Manchester, Sheffield and Lincolnshire companies): The English and Irish companies admittedly form parts of a through route, and should be heard together. It is a fair assumption that their lines will always be as freely open to each other's traffic, as if running powers actually existed. Through booking exists, and we want to secure

the certainty that we shall always be able to secure through rates, and equal facilities with what may hereafter be given at Greenore or Newry. The claim on the part of the English company is as strong without as with the Belfast Central company, but we should be greatly hampered in bringing our case before the Committee if the Belfast Central were not also heard, as the communication at both sides of the channel, instead of being complete, would be broken at Belfast. At present the Great Northern company charge equal rates by both routes, though the distance from Armagh to Belfast is 86 miles and from Armagh to Newry only 22 miles. But should this bill pass and both lines fall into the hands of the Great Northern, the shorter would obviously be the cheaper route to them. There will also be the inducement to convert the line *viâ* Greenore, in which they are partly interested, from a losing into a paying route. We want a protective clause, similar to that which was inserted in the Greenore Act of 1867 with reference to the Dundalk line, the rival route of that day. Universal experience shows that where amalgamations have been allowed without proper accompanying clauses, they have been followed by an increase of rates, and numerous instances are given in our present petition. In the way suggested, the bulk of an important traffic will be diverted. It may be said that we have the Railway Commissioners to appeal to in case of undue preference; but why should we be driven to seek for justice there? We prefer to see it stated, on the face of the Act itself which authorises the amalgamation, that the promoters mean, and will be compelled, if necessary, to do justice. We have embarked our capital in a line of steamers for the public advantage, and Parliament ought not to suffer injustice to be done to us.

Pember, Q.C. (in reply): The mode of petitioning adopted by the Belfast Central company is most inconvenient. They should have presented a separate petition, and one could then have dealt with each case on its own merits.

Mr. RICKARDS: How are you injured by what they have done. By the other course, you would have been compelled to meet three cases instead of two?

Pember: The Belfast Central case, instead of being put forward on its own merits, is mixed up with that of another company which has no real relation to it. In the House of Lords their *locus standi* was disallowed.

The *CHAIRMAN:* Did the other companies petition, jointly or separately?

Pember: Not at all. And they only petition

now, because in the House of Lords, clause 18 has been added, which extends to this Act of 1879 a section of the Act of 1877 for facilitating the transmission of traffic between England and Ireland, and for giving certain facilities to the London and North-Western. That gives them an interest in the bill which they had not before. I admit that the English companies have a right to be heard upon this one matter, but the Irish company wants to take this opportunity of raising a number of questions upon the preamble. They are in no better position now than they were in the House of Lords.

The CHAIRMAN: We need not trouble you further. We *Disallow* the *locus* of the Belfast Central, and we limit the opposition of the English companies to clause 18. By letting them be heard against clause 18, it will, I presume, be competent for them to urge that the clause shall be extended to them—that they shall have the benefit of it?

Pember: The usual form of decisions in this Court is “against” some particular portion of the bill; but, as far as the promoters are concerned, the petitioners shall have the fullest opportunity of urging that the provisions of clause 18 ought to be extended to them.

Rees (Parliamentary agent): I understand that they are to be heard on clause 18 generally?

Mr. RICKARDS: They are to be heard generally against the clause. They may either contend that the clause should be struck out altogether, or that, if retained, similar powers should be conferred on the other companies.

Rees: Or the clause may be modified and amended?

Pember: Yes.

Locus standi limited accordingly.

Agent for the three Petitioning Railway Companies, Rees.

Petition of (4) BENJAMIN LISTER FEARNLEY AND OTHER OFFICERS OF THE NEWRY AND ARMAGH RAILWAY COMPANY.

Railway — Purchase of — Amalgamation — Distribution of Purchase Monies — Compensation to Officers — Authorised, but not Secured — Tenure of Office — Subject to Dismissal.

Upon the proposed purchase of a railway undertaking by another company, where the bill provided that the purchase-money should be applied, *inter alia*, in paying their debts

and liabilities, and “in the next place, in paying all retiring allowances and compensations (if any) to their officers and servants,” and should divide and distribute the balance among their stockholders, the secretary and officers of the company brought under the bill petitioned with the object of making the provisions as to compensation more definite and certain:

Held, however, that as they could be dismissed by the company, whose officers they were, upon reasonable notice, they had no claim to a hearing against the bill.

The *locus standi* of the petitioners was objected to, because (1) they had no such vested interest or other right in the company as entitled them to be heard with a view of inserting provisions for compensation; (2) with regard to the piece of land held by Mr. Fearnley from the company under an agreement for a lease, the promoters were willing to save any rights under that agreement; (3) there was nothing in the petition entitling them to be heard.

Pembroke Stephens (for petitioners): The bill recognises our claim but makes no definite provision for meeting it. Clause 16 provides that the Newry company shall apply the money which they receive from the purchasing company “in the first place in paying all their debts and liabilities, and in the next place in paying all retiring allowances and compensations (if any) to their officers and servants, and shall divide and distribute the balance among their stockholders.” The petitioners have been in the service of the railway company as salaried officers for periods varying from 4 to 20 years, and in consequence of the transfer will be deprived of their offices and emoluments. They are advised that even their common law rights, as persons entitled to the *status* of an annual hiring for the unexpired portions of their respective engagements, will be taken away if the bill should pass in its present shape. This is peculiarly hard upon them, after all their exertions to preserve and develop the business of the company.

The CHAIRMAN: These gentlemen cannot have a vested interest in their offices. The company may discharge them, on reasonable notice, of their own free will and pleasure, and they may amalgamate with another company without being obliged to carry over all their servants.

Mr. RICKARDS: This will not take away the right which their officers have to reasonable notice, or to compensation in lieu of notice.

Stephens: We should be satisfied if the clause made a reality of that which it professes to shadow out.

Mr. RICKARDS: The bill gives power to grant compensation, if there is any money left for that purpose.

Stephens: As regards Mr. Fearnley's interest in the lease, I understand that the promoters are willing to concede his *locus* on that point.

T. Coates (Parliamentary agent): No; we will save the agreement, but we will not grant a *locus*.

Pember, Q.C. (for promoters), was not called upon.

The CHAIRMAN: The Referees think that the petitioners have no *locus standi*.

Locus standi Disallowed.

Agent for Petitioners, *Bell*.

Agents for Bill, *Dyson & Co.*

LANSDOWNE-ROAD, RATHMINES, AND RATHGAR TRAMWAY BILL.

Petitions of (1) THE DUBLIN TRAMWAYS COMPANY; (2) DUBLIN SOUTHERN DISTRICT TRAMWAYS COMPANY; (3) DUBLIN CENTRAL TRAMWAYS COMPANY.

28th April, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Tramways—Competition by, with Existing—Junctions and Crossings over Existing Tramways—Running-powers Over—Traffic Endangered by—Passing Places, Interference with—Physical Interference with Tramways—Limited Locus Standi in Respect of—User of Tramway by New Company—S. O. 133 (as to User of Railways by Another Company)—Distinction between Railways and Tramways Considered—Easement in Roads Possessed by Tramway Companies—Tramways Act, 1870.

The bill was one for the construction of a tramway running to the suburbs from a starting-point in Dublin, and it proposed to confer on the promoters compulsory powers as regards junctions, crossings, and user, over parts of the tramways of the three petitioning companies. A limited *locus standi* in respect of the proposed physical interference and running-powers was conceded to the

petitioners; but they asked to be heard generally against the bill on the ground of competition and upon the merits, calling in aid the S. O. which, at the discretion of the Court, allows a general *locus standi* in like cases to railway companies. It was objected that the two cases were not analagous, railway companies being absolute owners of the land so interfered with, while tramway companies possess merely an easement in the part of the streets traversed by their lines:

Held, that there was no case of competition, and that the *locus standi* of the petitioners must be limited to those clauses by which running-powers would be given to the promoters, or by which any physical interference with the petitioners' tramways was authorised.

The bill authorised a tramway starting from Lansdowne-road to Rathmines and Rathgar. Clause 5 proposed the physical interference complained of. The running-power clause (11) was as follows: "The company and all other companies and persons lawfully using the undertaking of the company may run over, work, and use with carriages and horses for the purposes of traffic of every description," the portions of tramway therein described; "and the company may levy tolls, rates, and charges on each of the said portions of tramway, not exceeding the tolls, rates and charges authorised to be levied thereon." And clause 12 provided as follows: "The terms, conditions and regulations to which the company shall be subject in respect of the use of the several portions of tramway in the last section mentioned, and the tolls or other considerations to be paid by the company in respect of such user shall, if not agreed upon between the company and the said several other companies respectively, be from time to time determined by arbitration."

The *locus standi* of the three petitioners was objected to on similar grounds, namely, (1) no competition between the petitioners and promoters within the meaning of the S. O. will be caused by the works to be authorised by the bill; (2) no property of the petitioners will be taken or affected; (3) the local and road authorities consent to the bill, and the petitioners have no monopoly of the streets or roads through which their tramways are laid down, and have no property or exclusive right even in that portion of the road within or between the tram rails, but only possess an easement for the purpose

of laying down and working their tramways, and have no other interest in such streets or roads than any one of the public, and have no right to be heard as regards any interference with the construction of works in such streets or roads, except as regards physical interference with their tramways; (4) the petitioners are not the owners or occupiers of any house, shop or warehouse, within the meaning of S. O. 135, in any street through which it is proposed to construct any tramway under the powers of the bill; (5) the *locus standi* of the petitioners ought to be limited to those clauses of the bill which authorise a junction with, crossing of, and user of, portions of the petitioners' tramways; (6) the power proposed to be conferred on the petitioners (Dublin Southern District tramways company) and the promoters to make agreements with each other (clause 10) are simply permissive and optional, and confer no right upon the petitioners to be heard against the bill.

Clerk, Q.C. (for the Dublin tramways' company): The compulsory powers to run over part of our tramway are powers which have never been asked for before, and we say that this proposal in the bill entitles us to be heard generally upon the merits. To these running-powers we strongly object, as likely to destroy the efficiency of that part of our undertaking, and to endanger all traffic as well as the safety of the public. We say further that the scheme of the promoters is an ill-devised and disjointed undertaking, of a speculative nature, for which no necessity can be shown, and which, if authorised, would most unfairly compete with and divert traffic from our existing tramways. Such running powers in tramway cases are wholly without precedent, and we allege also that the junctions and crossings would be objectionable and dangerous, and would prejudicially affect the safe and convenient working of our tramways. The proposed tramways, as we are prepared to show, are badly and injudiciously laid out, and are open to many engineering objections; they do not in themselves form a continuous line; and Dublin is already more than sufficiently provided with tramway accommodation, there being no less than four existing companies, each having a separate undertaking. We therefore ask to appear on these various grounds, and to show that it is inexpedient to incorporate a fifth company, especially with such powers as are sought by the promoters. As regards competition, though our route may be more circuitous between certain points, still there would be competition set up. In the case of all tramways a great part of the traffic is short distance traffic, so that between intermediate points there may be a good deal of com-

petition. Apart from competition, I contend that we are entitled to a *locus standi* against the bill generally on the same principle that a railway company whose rails are interfered with by another railway company are allowed a *locus standi* against that company to show that the scheme which is proposed to be sanctioned is altogether uncalled for. It is suggested in the objections that we stand in a different position to a railway company, that is to say, that we have only an easement in the streets, but the petitioners propose to run upon the rails which are our property. True, we do not possess the road upon which the rails are laid, but in the case of a railway company, the injury is not the touching of the land upon which the rails are laid, but the interference with that which gives the substantial value to their property, namely, the rails. The promoters not only seek power to cross our rails, but to join them, and compulsorily to use them for a considerable distance. In order to enable them to use the running powers they must obtain possession of part of our tramway for the purpose of making a junction.

Mr. RICKARDS: Do they propose to make any compensation for the use of the rails?

Clerk: It is provided that agreements may be entered into for the use of the tramway.

Mr. RICKARDS: We have held that it is not competent to a company, which has running powers on an existing railway, to object to another company claiming to have the same powers. Is not that a case somewhat analogous to the case of a tramway, which itself has only an easement of the public road, objecting to another tramway company coming also to ask for an easement on the same public road?

Clerk: I think not. If, indeed, this new company were asking power to lay a tramway along the same roads as our tramway is laid along, but not touching our tramway, the analogy would be complete, because we should be in possession of an easement over those roads and they would be asking for a similar privilege. But that is not the case here. The promoters are asking Parliament to limit me in the user of my privilege, because by putting the tramway cars of another company on a crowded tramway it is obvious that they may injuriously interfere with any possessory right.

Mr. FORSYTH: They may stop where they like?

Clerk: Yes; they may bring a series of tramway cars along the line and stop at any moment.

The CHAIRMAN: They might stop on purpose to prevent you from getting past their cars; they might nurse you as the omnibuses do?

Clerk: Yes, the promoters admit my *locus*

standi with regard to this objectionable user of the tramway, but they want to limit it to show that this compulsory user and compulsory joinings and crossings will be attended with inconvenience. I say we have a right to object to the thing being allowed at all, in the same way that a railway company is allowed to object to a bill generally where their rails are interfered with.

Mr. RICKARDS: The question seems to be whether S. O. 133 is applicable to a tramway company as well as to a railway company.

Clerk: No doubt tramways are not mentioned in the S. O., because tramways were not in the mind of Parliament at the time.

Mr. FORSYTH: The rails are the absolute property of the company?

Clerk: Yes; they are as much our property as the rails and sleepers on the railway are the property of the railway company. In the event of our becoming insolvent, the local authority could take up the rails and have them sold, returning us the surplus.

O'Hara (for the Dublin Southern District tramway company): The promoters seek to limit our *locus standi* in the same way as they seek to limit that of the Dublin tramway company, and we also ask to be heard against the whole principle of the bill. Under our Act we are to have "exclusive use" of our tramway for carriages and so on.

The CHAIRMAN: That means only as against ordinary carriages. It did not contemplate shutting out any future tramway company.

O'Hara: Very probably.

The CHAIRMAN: It was simply to prevent omnibuses from occupying the tramways to the exclusion of the tramway company?

O'Hara: No doubt; but we have an exclusive right as against all comers, unless they come with a Parliamentary title. Under the general Act there is power to make passing places with the consent of the local authority; we have in the exercise of that power made the passing places necessary for the purposes of our traffic; and to those passing places we have the same exclusive right as we have to the remainder of our tramway. The promoters propose to run parallel to our tramway and to remove or to render useless these passing places which are necessary for our working.

Mr. FORSYTH: Is that power conferred by the bill?

O'Hara: Yes. The bill says they may lay down the tramway in a particular way, and that particular way, according to the plan, will oust us from the field altogether. We also object to the construction of the proposed junction, and to the running-powers sought by the bill over

our tramways, and submit that such running-powers cannot be exercised without causing risk and confusion in the conduct of our traffic, and consequent danger and inconvenience to the public. Then we allege competition. I admit that we do not expressly say that competition will be set up; but we imply it. We say, "the sanctioning by Parliament of the construction and working of two different tramways in the same road, by two different companies, is unprecedented; and your petitioners submit that the traffic of the district is not sufficient to support two tramway companies." With regard to the proposed user of our tramway, the Board of Trade, by the Act of 1870, has already the power, in the event of the accommodation afforded by a tramway company not being sufficient, to require further accommodation to be afforded.

The CHAIRMAN: Would that authorise the putting on of additional carriages on an existing line, if the authorities considered that there were not a sufficient number already running?

O'Hara: Yes. This tramway is to cross us twice on the level and is to run parallel for a considerable distance. However much you may think that the words "exclusive use" are qualified by anything else in the Tramways Act, still we are in the enjoyment of an actual right from which we derive a revenue, and for the acquirement of which we have paid money. We come before you as owners of property, and ask you to enable us to be heard against the expediency of that by means of which we should be deprived of the profitable enjoyment of our property. It never was contemplated at the time the General Tramways Act was passed that a tramway company would come to ask for power to run alongside an existing tramway.

Mr. FORSYTH: What is the distance that they run parallel to your tramway?

O'Hara: About a quarter of a mile. Suppose we were to go before the Committee with a limited *locus*, which the promoters say is all we are entitled to, the Committee would only see that the interference was as little inconvenient as possible, but the Committee would be precluded from considering the main question, whether there were public reasons for allowing any interference whatever. We ought to be able to show the Committee that, looking at the line of tramway as a whole, it is inexpedient that it should be passed.

Cruse (Parliamentary agent for the Dublin Central tramway company): The promoters take running-powers over us for three furlongs, and they seek to limit our *locus standi* in the same way. I pray in aid the arguments which

have been addressed to you by Mr. Clerk and Mr. O'Hara.

Pembroke Stephens (for promoters) : The competition is too remote to entitle the petitioners to be heard upon that ground.

The CHAIRMAN : We are with you as far as the question of competition is concerned. Looking at the map, we do not think it is a case in which we ought to give a *locus standi* upon the ground of competition.

Stephens : Against our proposal to run over them, we concede that they have a *locus standi* ; and also as regards crossing them. The Tramways Act, 1870, contemplated the case of one tramway crossing another.

The CHAIRMAN : The whole question turns upon S. O. 133—that is to say, whether under that S. O. a *locus standi* should be allowed generally, or whether it should be confined to these matters with respect to which the promoters concede the right of the petitioners to appear.

Stephens : S. O. 133, no doubt, at one time gave a general *locus standi* to a railway company where its line was joined or run over by another company ; but that S. O. was expressly altered for the purpose of giving the Referees powers to limit the *locus standi* of railway companies in such cases. In the case of the *North British and Caledonian Railways* (2 Clifford and Stephens, 256), the principle I contend for was laid down, and since then, in no case has the old practice been reverted to. If it is right to limit the *locus standi* in such cases, *a fortiori* it ought to be limited in the case of a tramway company. A railway company is obliged to buy the land upon which it constructs its line. In this case, all the tramway companies have got is an easement over the road. At the moment that the car is passing, the car has priority over a waggon or a carriage, but the moment the car has passed the public have the use of the road. There is, in fact, no exclusive user by the tramway company. The words "exclusive use" in the Tramway Act are to be read in connection with the words "subject to the provisions of this Act," the intention of the legislature clearly being that the rights of the public to the use of the road were not to be over-ridden.

The CHAIRMAN : We need not trouble you further. We think that the *locus standi* of the petitioners should be limited to those clauses by which running powers are given, or by which any physical interference with the tramways is authorised. For instance, the removal of passing places.

Stephens : Each tramway company is not affected by our line as a whole, but only by the

particular bit that interferes with their particular tramway.

Mr. RICKARDS : To take the case of the Dublin tramways company, their *locus standi* will be against as much of clause 5 as relates to tramways No. 2 and No. 3.

Stephens : You might put it this way—against so much of clause 5 as authorises junctions and physical interference with the tramways of the petitioners. You must put some limit, because the petitions raise the question of competition. You might say, against so much of clause 5 as authorises any works affecting the Dublin tramways company.

The CHAIRMAN : That is rather wider than our decision. We rather meant it to apply to the particular works pointed out.

Stephens : I am quite content to take your words : I believe that they really would meet the case.

The CHAIRMAN : "So much of clause 5 as authorises the construction of works affecting the Dublin tramways company."

Stephens : Physically affecting.

The CHAIRMAN : We want to exclude the opposition from going into the principle of the bill. We will say—*locus standi Allowed* against so much of clause 5 as authorises works joining, crossing, or otherwise physically affecting the tramways of the Dublin tramways company.

Mr. RICKARDS : When we come to clauses 11 and 12, it will be *locus standi Allowed* against so much of clauses 11 and 12 as relates to the tramways of the Dublin tramways company.

The CHAIRMAN : Then as regards the Dublin Southern tramway, we will say "so much of clause 5 as relates to No. 1," and the same words as to physically affecting.

O'Hara : I should ask you to add the words "passing place."

Mr. FORSYTH : That is the physical objection.

Mr. RICKARDS : Then the decision will run, "and so much of clauses 11 and 12 as relates to the Dublin Southern tramway company."

Mr. Stephens : Then as regards the Dublin Central tramways, their objection only seems to be to the running powers—that is to say, clauses 11 and 12.

Mr. RICKARDS : The *locus standi* of the Dublin Central tramways company will be limited to as much of clauses 11 and 12 as relates to the Dublin Central tramways company.

Agents for Dublin Tramways Company, *Sherwood & Co.*

Agent for Dublin Southern District Tramways Company, *Webb.*

Agents for Dublin Central Tramways Company, *Cruse & Clay.*

Agent for Bill, *Bell.*

LEEDS CORPORATION BILL.

Petition of (1) LANCASHIRE AND YORKSHIRE RAILWAY COMPANY; (2) MIDLAND RAILWAY COMPANY; (3) GREAT NORTHERN RAILWAY COMPANY; (4) LONDON AND NORTH-WESTERN RAILWAY COMPANY; (5) NORTH-EASTERN RAILWAY COMPANY.

19th and 20th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Improvement Bill—Recreation Grounds—Rights of Commoners—Purchase and Extinction of—Railway Companies—Differential Rating—One-fourth Exemption—Principle of—How far Applicable under General District Rate—Improvement Rate—Borough Rate—Public Health Act, 1875—Protection Taken Away—Municipal Corporation—Rights and Powers of, in various Capacities—Under Municipal Acts—As Sanitary Authority—Under Local Acts—Class of Ratepayers—Representation of, by Railway Companies—Borrowing Powers—Applied Differently, or to New Objects—Former Decisions Reviewed—Limited Locus.

Five railway companies sought to be heard against an improvement bill with the view of obtaining, or continuing, in their own favour, the benefit of a partial exemption from rating, and the question was argued, on both sides, as one of principle. The corporation already possessed powers under which the lands sought to be purchased might have been acquired by agreement, and devoted to purposes of public recreation; but it had been found necessary to buy with a view of extinguishing some outstanding commoners' rights, compulsorily; and hence special legislation became necessary. The bill declared that the expenses connected with this new park—and, on the other hand, any receipts under the bill—should be carried to the borough fund, as to which there was no exemption in favour of the railways; whereas the petitioners sought to have the improvement rate, which carried with it the exemption, made the basis of operations. They strongly relied upon Section 211 of the Public

Health Act, 1875, as the latest expression of the mind of the legislature on the policy of such exemptions. The promoters urged that the section was merely permissive, and, as far as date went, a simple repetition of powers in the earlier Public Health Acts. Three local Acts had been obtained by the corporation, in 1866, in 1872, and 1877; in the first of these, expenses of the kind under consideration, were charged upon the borough fund, and in the last two upon the improvement rate. In the later Acts, the alteration was admittedly made at the instance of the railway companies; but it was suggested that they had been opposing the bill on other grounds, as to which their *locus standi* was undoubted. The decisions *pro* and *con* as to differential rating were very fully quoted and discussed.

Ultimately the railway companies obtained a *locus standi*, limited to the rating, or purchasing power.

Objection having been taken that the partial exemption as to rating in favour of railway companies was given, not to railway companies individually, but to a class, including owners of canals, market gardeners, and others as well, and accordingly that the class as a whole ought to have petitioned:

Held, that as all the railways in the locality affected by this question had in fact petitioned, they must be regarded, for this purpose, as constituting a class.

The *locus standi* of all the petitioners was objected to, because (1) no land, &c., of theirs was taken; no rights, &c., were interfered with; they were not injuriously affected by any provisions of the bill, and the petitions apparently pointed at an alternative scheme; (2) their interests were not distinct; (3) they were affected (if at all) only as individual ratepayers, and in that capacity were represented by the corporation; (4) no new rate was created, and the existing law of assessment as affecting the petitioners was not altered; (5) the monies proposed to be charged to the borough fund and borough rate were properly so chargeable, and the receipts arising under the bill would similarly be carried to that fund; (6) petitioners were not entitled to be heard, either as

ratepayers or in any other capacity, and their complaint was really directed against general legislation; (7) they had no right to be heard according to practice.

Pope, Q.C. (for the Great Northern and North-Eastern railway companies): There are a number of railway companies petitioning, but their cases are exactly similar, and they are all willing to stand or fall by a single decision. This case raises, for the first time, an important technical issue. Railway companies have often been heard in Committee upon the question whether they should be exempted or made liable to rating in cases where expenses or works have been charged under the bill upon particular rates or funds, but generally speaking this has happened when the companies were already before the Committee with an undoubted *locus standi* as to other points in the bill. In this instance, the sole point put forward and relied upon by the railway companies is that, if the bill passes, their *status* as owners will be altered, the works contemplated being charged upon a rate in respect of which they are liable instead of a rate from which they would, under the general law, be exempt. Clause 8 authorises the corporation to purchase Hunslet Moor; clause 9 makes provision for compensation; clause 17 provides that "all compensation monies payable by the corporation for, or in respect of, the lands hereinafter defined as the open spaces, or any part or parts thereof, shall be paid by and out of the borough fund or borough rate." Then clause 48 says that "All expenses incurred by the corporation in carrying into execution the provisions of this Act shall be paid out of the borough fund." The scope of the bill, therefore, is to enable the corporation to purchase lands for the purpose of recreation or pleasure grounds, and to charge the compensation and expenses incurred by the corporation upon the borough fund. On the other hand, it is provided by the Public Health Act, 1875 (section 164), that the urban authority may purchase lands for the purpose of being used as public walks or pleasure grounds; (section 207) that "all expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act;" and, by section 211, that in levying general district rates, "the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part

only of such net annual value thereof." So that the urban authority would, under the General Act, have power to purchase lands for the purpose of public recreation, charging those expenses upon the district rate, and if they did so, railways would be assessed only to a quarter. The Public Health Act, 1875, of course deals with the general district rate, but the same principle applies to any other rate analogous to, or in the nature of, a general district rate, such as an improvement rate, for instance; and, in fact, this exemption, as applied to the improvement rate, exists in very similar terms in more than one of the Leeds local Acts. The bill, accordingly, alters our *status* as far as the general law is concerned, for it throws these expenses not upon the general district rate, or improvement rate, but upon the borough rate, as to which there is no exemption. Leeds has also had some special legislation of its own upon this subject; and it is necessary to see how this bears upon the subject. In 1866 an Act was passed enabling the corporation to purchase certain lands on or near Woodhouse Moor for purposes of public recreation; and if legislation had stopped with that Act, I admit that we should not have been entitled to a *locus standi*, because section 75 says, "all expenses incurred from time to time by the corporation after the passing of this Act, in purchasing and adapting for the purpose of recreation Woodhouse Moor, and any other lands, and improving the same for public use and recreation, shall be charged and paid out of the borough fund and borough rates." In 1872, however, the corporation of Leeds were again before Parliament. There were no powers in that bill to take fresh lands for recreation purposes, but power was sought to borrow £150,000 additional for that object. Against that proposal the railway companies were heard. I do not rely on that as a precedent, for I believe the railway companies, though they took part in the discussion, had a *locus standi* independently of the rating question. The fact remains, however, that they appeared, that the question was argued, and the legislation of 1866 reversed, the £150,000 which, under the bill as drawn, was to have been chargeable upon the borough fund, in accordance with the Act of 1866, being taken away from the borough fund and placed upon the improvement rate with regard to which the exemption exists. The Act of 1872 indeed went further, for it referred to the purposes of the Act of 1866, as well as to the purposes of the Act of 1872 itself, as those for which the £150,000 to be borrowed on the security of the Improvement Act were to be applied. All corporations feel that it is desirable to preserve

their borough fund intact, and hence, instead of inserting in the Act of 1872 as drawn an exemption in favour of railways which would have affected the borough fund and borough rate, they took the other course and put the money back upon the improvement rate, saying nothing about exemption, which followed as a matter of course. In 1875 came the Public Health Act, which makes the exemption general; but to show clearly that Parliament had no intention that the Act of 1866 should be considered still in force, when the Leeds corporation were in Parliament in 1877 for power to take more land for recreation purposes, the money to be borrowed for the purpose was (section 65) charged on the improvement rate, and (section 90) the railway company succeeded in inserting the one-fourth clause, i.e., the very exemption of the Public Health Act itself. Accordingly I am not driven to contend that the spirit of the general legislation of 1875 overrides any special legislation contained in earlier local Acts, for here in Leeds the special legislation itself has been reversed, and all the money borrowed, and all the lands taken under powers obtained since 1866 have been brought back, directly or indirectly, to the improvement rate.

The CHAIRMAN: I suppose all these companies were rateable, and had stations at Leeds in 1866?

Pope: Yes; and of course in 1872 and 1877. I abstain from entering upon the reasons which have governed Parliament in granting these exemptions in favour of railway companies. Sometimes we have succeeded, and sometimes we have been unsuccessful. But have I not shown that the bill will alter the *status* of the railway companies to such an extent that they ought to be heard as to the justice of that alteration? The corporation do not in this bill take power to raise further monies; they must, therefore, apply moneys which they have already power to raise, and so divert a fund which is, as it were, ear-marked to other purposes.

Mr. RICKARDS: Is it not rather a new liability created under the bill for the purchase of these commoners' rights?

Pope: It is a new power to apply the money to be borrowed under the old power. There is no money power under this bill.

Mr. RICKARDS: Do you not call it a money power to provide that certain expenses to be incurred under the bill shall be taken out of borough fund?

Pope: Yes.

The CHAIRMAN: This bill, you say, has a new object, and is not to carry out the purposes of the former Acts?

Pope: It does not extinguish the powers of the Act of 1866; it gives power to buy up a

new claim which was not known when the previous Acts passed. And for the first time, and, as I say, against the provisions both of the special Acts originally authorising them to take the land, and the provisions of the General Act, it seeks to charge the cost of perfecting the recreation grounds upon the borough fund.

The CHAIRMAN: I should like to know whether this bill contemplates purchasing something new, or whether it only carries out the purposes of the former Acts?

Pope: It does both.

The CHAIRMAN: Will not your argument be different with regard to those two points?

Pope: I have been endeavouring to show that if it is to do something further—that is, to perfect the recreation ground, it ought, according to the Public Health Act, 1875, to be charged upon the improvement rate.

The CHAIRMAN: If the object is a new one, the previous legislation cannot have very much to do with it.

Mr. BRISTOWE: As I understand the argument, the cost of the purchase of lands for recreation purposes would, as the law stands, be charged upon a rate in respect of which the railway companies are partially exempt, whereas clauses 17 and 48 of the bill seek to transfer the cost from the district fund to the borough fund in respect of which no such exemption exists?

Pope: Yes, and there is also the further question as to the purchase of commoners' rights, which has sprung up since the former Acts were passed.

Mr. BRISTOWE: Clause 8 of the bill gives the corporation power to purchase fresh lands?

Pope: They have the power to purchase already. But their power under the Act of 1877 is a power to acquire lands by agreement, and to complete the recreation ground they require something further.

Pembroke Stephens (for promoters): I must ask the Court to separate, in their own minds, the different powers which the corporation of Leeds possess, instead of blending them, as my learned friend has done. For the purposes of legislation, and accordingly of *locus standi*, a corporation may be one of three things. It may be a corporation, pure and simple, existing, owning property and discharging functions, under the authority of the Municipal Corporation Acts, without reference to any others. It may be, and usually is, also, an urban sanitary authority, acting under the provisions of the Public Health Act. Lastly, it may be a municipal corporation, exercising the special powers conferred upon it under the provisions of various local Acts. Each of these capacities and sets of powers is wholly distinct in its origin and nature; and the

difference between them will appear if an individual case is taken. A local board, as an urban sanitary authority, has precisely similar powers, under the Public Health Act, to those possessed by a municipal corporation when, by virtue of the same Act, it is constituted an urban sanitary authority; but it is not a corporation in the same sense. It exercises merely the powers of the Public Health Act, and the power to levy a borough rate or to have a borough fund does not belong to it. There are bodies all over the country exercising the powers of the Public Health Act which never had and probably never will have a mayor or town council. In dealing therefore with a borough fund and borough rate you are not concerned with the Public Health Act in any way; you are dealing with the attributes of a corporation differently constituted, that is to say, either by charter of incorporation or under the Municipal Corporations Acts. In the same way, the borough fund and borough rate are not the offspring of any private Acts, but owe their existence to the municipal system. The Public Health Act was spoken of as though it had been passed for the first time in 1875, over-riding and altering the legislation which previously existed; but in point of fact the Act of 1875 simply consolidated the provisions of some twenty Acts, beginning in 1848. The particular exemption referred to in the Act of 1875 existed equally in the Public Health Act, 1848, and in the Local Government Act, 1858, so that if the argument as to a later Act over-riding a former Act be sound, it follows that inasmuch as the special legislation of 1866 was inconsistent, it must be taken, at Leeds at any rate, to have over-riden the exemptions created in 1848 and 1858. But let us look closely at the exemption itself. The 207th section of the Public Health Act provides that "All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall" be so-and-so. Accordingly, the moment such expenses are "otherwise provided for," the provisions of the Act of 1875 fail. In other words, that Act is permissive, and not compulsory, in its operation, and may be left out of consideration for present purposes. There is admittedly no such exemption, as my friend relies on, to be found in the Municipal Corporation Acts. There remain, therefore, to be considered only the special Acts applicable to the corporation of Leeds. Section 73 of our Act of 1866 provides that "the corporation from time to time may purchase by agreement any lands adjoining or near to the Woodhouse Moor, for the enlargement, improvement, and extension of the same,

and any other lands in the borough or in the neighbourhood thereof, for the purpose of providing additional places of public use or recreation." Section 75 of the same Act provides that "All the expenses from time to time incurred by the corporation, after the passing of this Act, in purchasing and adapting for public use and recreation Woodhouse Moor and any other lands, and in maintaining and improving the same for public use and recreation, shall be charged upon and paid out of the borough fund and borough rates of the borough." That Act has been enforced in four different cases, and in each the expenses have been charged upon the borough fund and the borough rate. These sections of the Act of 1866 have never been repealed.

Mr. BRISTOWE: Could you purchase Hunslet Moor under the powers of that Act?

Stephens: Certainly. The words are "any other lands;" and but for a question which has arisen those lands would be ours now; in fact, I may say they are ours now, under a provisional agreement, but the moment the powers of agreement fail and some other right is met with as to which there is no representative person with whom to agree, then for that particular purpose some other machinery must be provided, and an application to Parliament becomes necessary.

Mr. FORSYTH: Commonable rights, for instance?

Stephens: Yes.

Mr. BRISTOWE: You are taking compulsory powers here, whereas under the Act of 1866 you had no compulsory powers?

Stephens: In order to extinguish certain commonable rights which we have reason to believe may be outstanding, we are obliged to take compulsory powers. This may be described as a bill for one object merely—that of adding to the words in the Act of 1866—"the corporation may from time to time purchase by agreement"—the words "or otherwise." If the words "by agreement or otherwise" had been in section 73 of the Act of 1866, it would have done everything which this bill aims at; or, if we could have agreed with anybody for the purchase of all the rights, we could then have charged the expenses upon the borough fund, under the Act of 1866, and there would have been no occasion for this bill at all. My friend treats section 57 of the Act of 1872, as if it were a virtual repeal of the Act of 1866. But what is that section? "The corporation may from time to time, in addition to any money they are already authorised to borrow, borrow and re-borrow at interest on mortgage of the improvement rate, authorised by the Acts of 1842, 1856, and 1866, any sums not exceeding in the whole one hundred thousand

pounds for the purpose of the improvements by this Act authorised; and also, in addition thereto, any sums not exceeding in the whole one hundred and fifty thousand pounds for the purposes of the Act of 1866 connected with parks and places of public recreation." How is that in any sense a repeal of the Act of 1866, which said that lands might be purchased by agreement, and charged upon the borough rate? Section 57 only says that we may charge expenses for certain purposes, viz., parks and places of recreation upon the new rate, viz., the improvement rate, not taking away our already existing power of charging similar expenses upon the borough fund. The North-Eastern railway company were before the Committee on the bill of 1872, not primarily upon this rating question, but as landowners, and the reason for that concession made as to the improvement rate may have been that Roundhay-park, for which the money was then required, was outside the borough, and it may have been considered that the expenditure was not therefore a proper one to throw upon the borough fund. But the power to charge such expenses upon the borough fund remained intact under the Act of 1866, and the precedent is not accordingly one which gives the railway companies a right to be heard upon a purely rating question now.

The CHAIRMAN: The last part of clause 57 may bear the interpretation that the whole of the £150,000 is not necessarily to be borrowed on the improvement rate, though part of it, viz., £100,000, is to be borrowed on that rate?

Stephens: It would bear that interpretation, but in fact the amount has been raised upon the improvement rate. With regard to section 90 of that Act of 1877, the exemption is there given not only to railway companies, but to owners of canals, market gardeners, and others, and you have only the railway companies here.

Mr. RICKARDS: We have the whole of one class before us: we have all the railways who are affected by it, and we think that sufficient.

Stephens: Confining it to railway companies, what right have they to be heard to ask for an exemption from the borough fund? No case has been cited in which railway companies have been allowed a *locus* for such a purpose. This is not a railway bill, it is not a bill conferring borrowing powers, it does not in any way alter the existing law. The utmost which can be said of it is, that it creates a new head of charge on a particular and existing fund, to which the companies may be called on to contribute. These are selfish applications for relief by a class of ratepayers, whereas the corporation represent the general interest. In the vast majority of cases, railway companies have been refused a

locus standi where they came forward seeking a partial exemption from rating. (*Liverpool Improvement Bill, 1867, Petition of Lancashire and Yorkshire Railway Company, 1 Clifford & Stephens, 48; Milford Improvement Bill, Petition of Great Western Railway Company, Ib. 50; Sheffield Corporation Water Bill, 1870, Petitions of Midland Company, of Manchester, Sheffield, and Lincolnshire Railway Companies, 2 Clifford & Stephens, 56; Birmingham and Staffordshire Gas Bill, 1875, Petitions of London and North-Western, Great Western, and Midland Railway Companies, and of Birmingham Canal Navigation, 1 Clifford & Rickards, 138; Birmingham Corporation Gas Bill, Ib. 141 (Note); Birmingham Water Bill, 1875, Petitions of London and North-Western and Great Western Railway Companies, Ib. 144; Lancaster Water and Improvement Bill, 1876, Petitions of London and North-Western and Midland Railway Companies, Ib. 237.*)

Mr. RICKARDS: Though the cases cited all involve the principle of differential rating, the *Lancaster Bill* appears to have been the only one in which it was distinctly proposed to purchase lands for purposes of public recreation.

Coates (Parliamentary agent) referred to the *Cardiff Improvement Bill* (2 Clifford & Stephens, 154) where the *locus* of the Great Western, Taff Vale, and Rhymney railway companies had been allowed.

Stephens: In that case the rating was altered by the bill.

The COURT (after much deliberation): We have decided to allow the *locus standi* of all the Railway Companies, confined to the rating or purchasing power.

Pope: That will be as to clauses 17 and 48.

Limited locus Allowed.

Agents for Lancashire and Yorkshire Railway Company, *Sherwood & Co.*

Agents for Midland Railway Company, *Beale & Co.*

Agents for Great Northern Railway Company, *Dyson & Co.*

Agent for London and North-Western Railway Company, *Roberts.*

Agents for North-Eastern Railway Company, *Sherwood & Co.*

Agents for Bill, *Simson & Wakeford.*

LONDON BRIDGE BILL.

Petitions of (1) The BRIDGEMASTERS; (2) The LIVERYMEN OF LONDON.

21st April, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS; Sir JOHN DUCKWORTH, and Mr. BONHAM-CARTER.)

Corporation of London—London-bridge, Widening of—Liverymen, Separate Interests of, in Bridge—Bridgemasters—Charters Relating to Recitals in former Act, not repeated.

Against a bill promoted by the corporation of London and authorising them, *inter alia*, to widen London-bridge, petitions were presented by (1) the two bridgemasters, who contended that there was no recognition of their status under ancient charters as keepers of the bridge and as trustees receiving certain rents and tolls applicable to its maintenance, the accounts relating to which they were bound to present annually to the livery, by whom they were annually elected; while (2) the liverymen, in virtue of their position as a body appointing the bridgemasters, and to whom they must account, claimed a distinct interest from the corporation, this interest as they complained being also ignored in the bill:

Held, that the position and rights of both sets of petitioners were unaffected by the bill, and that they had no *locus standi*.

(*Per Cur.*) The fact that a bill does not mention a petitioner will not entitle him to a *locus standi*, unless the bill also affects his powers, interests, or privileges.

The *locus standi* of the bridgemasters was objected to, because (1) they allege that they are the elected officers under the charters and Act of Parliament to which they refer for the keeping of London-bridge, and the rents and profits to that bridge pertaining, and they complain in fact that the bill takes no account of them as the rightful keepers and custodians of the bridge, and the bridge-house estates; but the bill does not affect the petitioners, or either of them, either individually or as such keepers and custodians; (2) they do not allege or disclose any ground of objection, which, according to practice, entitles them to be heard.

The *locus standi* of the liverymen was objected to, because (1) they do not show how the bill injuriously affects them, nor does it affect them or diminish any of their lawful powers; (2) the petitioners are only 26 in number, while there are some thousands of the liverymen, and even if the liverymen had a right to oppose the bill, which is altogether denied, they could only have done so by order of the livery in common hall assembled, and no such order has in fact been made; (3) no ground of objection is alleged which entitles the petitioners to appear according to practice.

Kemm (one of the bridgemasters): We are elected every year by the livery of London in common hall, under charters 12 Ed. II., 12 Ed. III., and 4 Ed. VI.; and our position is defined by the charter of 12 Ed. III., which provides:—"That the keeping of the bridge, and the rents and profits to the bridge pertaining, be committed to two good and sufficient men of the city aforesaid, other than the ferry-men, who shall be hereunto chosen by the commonalty of that city, and who shall be answerable, therefore, to the same commonalty, and to none others." Since then the election of officers of the city of London has been taken out of the hands of the commonalty, and given to the livery (11 Geo. I., c. 18). The charters declare that the rents and profits of the bridge-estate are to be received by the bridgemasters on account of the mayor, aldermen, and commonalty, and by the Act for rebuilding the present London-bridge, the bridgemasters were acknowledged to be the proper authorities with whom the Government of the day were to deal with regard to the repayment of the loan. In this bill, however, we are entirely ignored; our sanction has not been asked to it, and we have not been consulted about it in any way.

Mr. RICKARDS: Do your powers apply to London-bridge itself, or only to the bridge-estates?

Kemm: To both. I can order any person obstructing the bridge to be given into custody.

The CHAIRMAN: Have you anything to do with the repairs?

Kemm: The repairs of the former bridge were always done by the bridgemasters, but that is not the case now, though no legislation has passed taking away our powers in this respect.

Mr. RICKARDS: How will this bill affect your rights or duties?

Kemm: It entirely ignores our existence. In the Act of 1823, for rebuilding the bridge, we were expressly mentioned.

Mr. RICKARDS: The fact that the bill does not mention you will not entitle you to a *locus*

standi, unless it also affects your powers, interests, or privileges. Apparently, you do not now exercise any power over the bridge. How do you apply the rents and profits received by you on account of the bridge?

Shrubsole (for promoters): They hand them over to the corporation, who spend the money.

Kemm: We are trustees of the bridge-estates, and the bill authorises the corporation to borrow £65,000 on the security of these estates.

Shrubsole: The 4th Geo. IV., the Act of 1823, for rebuilding London-bridge, contains the following recital: "And whereas the rents and profits of the said estates are received by the wardens or keepers of London-bridge on account of the said mayor and commonalty of citizens," so that the bridgemasters are not trustees. Any moneys they receive they hand over to the corporation.

Kemm: We say that a similar recital should be inserted in the bill.

Mr. RICKARDS: Your office, as receivers of the rents and profits, will not be affected by anything in the bill. You will still act in the same capacity.

The CHAIRMAN: The 4th Geo. IV., s. 76, seems to put you out of Court, for it requires you, so long as any charge upon the bridge-house estates is outstanding, to pay into the chamber of the city the rents and profits, or such parts thereof as the mayor, aldermen, and commons, in common council assembled, shall, from time to time, direct. So that you are the mere servants of the corporation?

Mr. RICKARDS: You cannot now control the expenditure of the rents and profits, and if you cannot do that, you cannot contest the charging of them; therefore, the clause enabling the corporation to charge them does not affect your rights.

Kemm: We ask to have the same recitals in this bill as are contained in the former Act.

The CHAIRMAN: What are the duties of the bridgemasters?

Kemm: The following are their duties as appears by the report of the Commissioners of 1837:—"To receive the rents and profits of the bridge-house estates, to pay the salaries and wages of the several officers and workmen, and to make the other necessary disbursements. To see that the watchmen and labourers do their duty. To summon and attend the auditors of the accounts when required, and to verify such accounts upon oath before the lord mayor. To summon and attend all meetings of the Committee for letting the bridge-house estates, and to execute such orders as they shall make. To attend the lord mayor, and court of aldermen, and livery, on Midsummer-day. To attend at

the bridge-house throughout the year on Saturdays, and during the months of April and October on Tuesdays, also, from ten till two; to sign notices to all the tenants, to pay rents and to sign receipts for all monies paid into the bridge-house, and immediately to carry the same to account in the cash-book. All licenses and receipts are to be signed by the two bridge-masters, or, in case of the vacancy or illness of one, then by the other bridgemaster and comptroller of the bridge-house. The duty of the bridgemasters is further to balance their cash-books at the close of the day, and deposit the balance in the cash-box, to be locked up in the chest in the muniment-room, under the keys of the two bridgemasters and their assistant clerk, at the bridge-house. To deposit all monies in hand, exceeding £200, in the chamber of London for safe custody, and to pay the surplus rents and profits of the estates, after defraying all existing charges upon the estates, and the expenses of managing and improving the same, and lighting, watching, paving, and repairing the bridge, into the chamber of London, pursuant to the directions of the Act of Parliament, 4 Geo. IV., c. 50." "The bridgemasters have to sign all warrants for distress for rent, and to attend when required by the comptroller to demand rent, to receive money from the court of Chancery, and to receive or deliver possession of any premises belonging to the bridge-house."

Mr. FORSYTH: Not one of those duties is affected by this bill.

The CHAIRMAN: It seems to us that your duties or rights are not in any way interfered with by anything in this bill, and therefore we cannot see that you have any claim for a *locus standi*.

Locus standi Disallowed.

Mr. John Jones (for the liverymen): The livery of London elect the officers for managing the bridge-house estates, and the corporation of London, with whom the livery are in collision, are doing all they can to abolish the office of bridgemaster, and have done all they can to ignore these officers, though they are obliged to send for them when they want their signatures to the transfer of property. We, the livery of London, have to receive the accounts of the bridgemaster, and to ascertain for ourselves whether those accounts are satisfactory.

Mr. FORSYTH: That duty will not be interfered with by this bill. The bridgemasters will have the same powers as regards presenting the accounts to you that they have now.

Mr. BONHAM-CARTER: Have you any right to object to the expenditure of any of these monies?

Jones: Yes; I say that we have, because

the accounts are to be presented to us. We appoint the auditors, and we examine the bridgemasters with respect to these accounts.

Mr. FORSYTH: There is nothing in this bill to prevent that same process going on in exactly the same way after the bill is passed.

Jones: We want the same recitals put into this bill as were put into the Act of 4th George IV.

The CHAIRMAN: The preamble of that Act does not say anything about you. It says that the trustees of the funds of the bridge are the mayor, aldermen, and commonalty, and that the bridgemasters are the receivers of the rents and profits on account of the said mayor, &c.

Jones: That is what we want inserted in this preamble.

Mr. RICKARDS: There is no particular virtue in those words.

Jones: By one of the clauses of the Act of 4th George IV., it was provided that the bridgemasters should repay the money that the Government lent. We should like that to be recited in this Act.

Mr. FORSYTH: That clause will remain in force: it is not repealed.

Mr. RICKARDS: If the practice is now in contravention of the existing law, the law will afford a remedy.

Jones: It is very expensive to go to law.

Mr. RICKARDS: We cannot recognize that as an argument on *locus standi*. We do not usually give a *locus standi* against a bill where a petitioner has a legal remedy.

Mr. FORSYTH: You are in no way damnified by this bill.

Locus standi Disallowed.

Agents for Bill, Dyson & Co.

LONDON, BRIGHTON AND SOUTH COAST AND SOUTH-EASTERN RAILWAY COMPANIES BILL.

Petition of JOHN WM. GROVER.

17th March, 1879. — (Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railway Company—Practical Dissolution of—Part of Undertaking Abandoned—Transfer of Part to other Companies—Deposit, Repayment of to Promoters—Creditor, Claim of—Security of, how far Interfered with.

In 1876 an Act was passed incorporating the Caterham and Godstone Valley railway company, with powers to construct two lines, distinguished as Nos. 1 and 2. These powers were not exercised, and a bill was now promoted transferring them to the Brighton and South-Eastern companies as regards railway No. 1, abandoning railway No. 2, and, in consideration of the undertaking by the two last-mentioned companies to carry out railway No. 1, providing for the return of the deposit of the Godstone company to the promoters of that company. *Per incuriam* the preamble recited the proposed dissolution of the Godstone company, but there was no corresponding operative clause. A petition was presented from a creditor who complained that the two companies did not take upon themselves the liabilities of the Godstone company, and that he might be deprived of the means of enforcing his claim by the practical dissolution of the company and the return of the deposit. The promoters agreed to withdraw the recital in the preamble referring to the dissolution of the original company:

Held, that as the debtor-company would still exist, and the legal rights of the creditors against it would be unaffected by the bill, the petitioner had no *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) he complained that the bill does not provide for the winding-up and dissolution of the Caterham and Godstone Valley railway company, but this is a matter which does not concern or affect him, nor does he allege that he is affected or injured by any such omission, nor could he in fact do so; (2) the petitioner further alleges that the bill makes no provision for preserving the rights of creditors or for transferring the general liabilities of the Caterham and Godstone Valley railway company to the two companies, but the bill in no wise deprives the petitioner of the rights (if any) which he already has against the said company, or any promoter or promoters thereof, and the capital and funds of the said company; (3) the release of the deposit-money cannot injure or affect the petitioner, who has no claim to a lien upon such money; (4) he is not entitled to appear according to practice.

Tahourdin (for petitioner): This is a creditors' case. Mr. Grover was employed by the Caterham

and Godstone railway company as their engineer, and his professional charges are still unpaid. The bill transfers to the Brighton and South-Eastern companies the powers conferred by the Godstone Act, with respect to railway No. 1, and contains the usual S. O. clauses imposing on the two companies penalties unless the railway is opened within the extended time limited by the bill, and it also proposes to enact that, in consideration of the liability of the two companies to the foregoing penalty, section 27 of the Godstone Act (deposit not to be repaid until line opened or half the capital paid-up and expended), and section 28 (application of deposit), should be repealed, and H.M.'s Paymaster-General should be authorised to repay to the promoters of the Godstone bill the sum deposited by them. By the transfer of the powers to make and maintain railway No. 1 to the two companies, and the abandonment of railway No. 2, being the only two railways which the company were incorporated to make and maintain, the company will practically cease to exist, and will have to be wound-up and dissolved; but the bill contains no provision, as it should have done, to carry out this object or to preserve the rights of creditors, or transfer the general liabilities of the Godstone company to the two companies. In fact, the effect of the bill is to dis-incorporate the Godstone company by absorbing its powers without making any provision for the protection of creditors, or for substituting any other liability for that of the defunct company. It will thus be impossible to raise the capital of the Godstone company on which the petitioner has a claim, and by releasing the money-deposit, without substituting any other fund subject to the same liability, the petitioner will be deprived of the security which this fund represents, and which in certain eventualities would be applicable to the payment of his claim. In this way any remedy which he might have against the Godstone company will be deprived of any practical effect.

Mr. RICKARDS: For anything which appears in the bill, the Godstone company will still continue in existence. The preamble states that it is to be dissolved, but there is apparently no clause in the bill to carry out that recital.

Shrubsole, Parliamentary agent (for promoters): There is no necessity to dissolve the company, because it does not exist. This recital in the preamble was inserted *per incuriam*, and I undertake to withdraw it.

Mr. RICKARDS: The petitioner will still be a creditor in spite of this bill, and will still have his legal remedy.

Tahourdin: He would have nothing upon which he could enforce his claim.

The CHAIRMAN: There is nothing in the bill to over-ride the power of raising capital provided by the Act of 1876.

Tahourdin: But the bill puts an end to the possibility of raising the capital, because if one of the two authorised lines is vested in two other companies, and the other line is abandoned, no one will subscribe money to the Godstone undertaking. A case on all fours with this is the *North Wales Railway Bill, Petition of Albert Grant* (1 Clifford & Rickards 251). If the Godstone company went to the Board of Trade for power to abandon the line, the Board would be able to refuse to give an order for abandonment, except upon the condition of the deposit-money being made part of the general assets of the company. Here power is given to return the deposit to those persons who have advanced the money.

Mr. RICKARDS: The deposit is a fund only applicable in a certain contingency, namely, in the case of the insolvency of the company, and legally the company will subsist with all its liabilities, and your rights against it will exist after this bill is passed.

Tahourdin: If the Godstone company is placed in such a position that it will be impossible to raise any capital, what are my rights worth?

Mr. RICKARDS: Your debtor will still exist, and your legal rights will still exist.

Tahourdin: They are taking away the only fund which will enable me to get any money out of them.

Mr. RICKARDS: We cannot assume that the company will not have funds wherewith to pay this debt, if you take legal steps to enforce it.

Tahourdin: I am only asking for a *locus standi* to preserve my rights against the Godstone company, who, by the bill, are being put in a position to defeat them.

Mr. RICKARDS: An ordinary creditor has no *locus standi* in such cases.

Tahourdin: That is in the case of an amalgamation; but this is the taking over by one company of some of the powers granted to another company under a special Act.

Mr. RICKARDS: If this were a bill for dissolving the company without making any provision for the continuance of its liabilities, that would be another thing.

Tahourdin: So far as creditors are concerned that dissolution will really take place, and the money deposited will be returned to those who lent it, entirely passing over the creditors. As there are no winding-up provisions in the bill, the result would be that, if I went to the Court of Chancery and got my claim allowed, there would be nothing to enforce it against.

Mr. RICKARDS: The question is not what you

wish put into the bill, but whether the bill contains anything in its clauses which affects your rights. We do not think it does.

Locus standi Disallowed.

Agents for Bill, Dyson & Co.

Agents for Petitioners, Tahourdin & Hargreaves.

METROPOLITAN AND METROPOLITAN DISTRICT RAILWAY COMPANIES BILL.

Petitions of (1) HAY AND STRAW SALESMEN OF THE MARKET HELD IN WHITECHAPEL, AND OWNERS, LESSEES AND OCCUPIERS, &c.; AND (2) TRUSTEES AND VESTRY OF THE PARISH OF ST. MARY, WHITECHAPEL.

17th March, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Underground Railway—Interference with Surface of Street, by—Market, Temporarily Obstructed by—Salesmen Using Market, Complaining of Temporary Interference with—Representation of Traders Using Market—Trustees Owning Market Tolls—Lands Clauses Act—Railways Clauses Act—Compensation for Injury to Trade and Trade Profits—Practice—Petitioners Raising Identical Questions—Distinct Interests.

A bill for constructing an underground railway was opposed (1) by all the salesmen using a market held in a street, the surface of which would be temporarily interfered with during the construction of the railway, and (2) by trustees who were statutory owners of the market tolls, both sets of petitioners complaining that the obstruction would prejudicially affect the business of the market, and thereby diminish the trade profits and the income arising from the tolls. It was objected that the petitioning salesmen did not sufficiently represent the public using the market; that the trustees were mere recipients of the tolls, which they were bound to hand over to the lord of the manor and the parish authorities; that the question of interference

with the roadway was sufficiently raised upon other petitions; and that the proper persons to raise it were the road authorities:

Held, as to the salesmen, that, though not entitled to the exclusive use of the market they, like freighters on a railway, must be taken to represent the traders using it; that the market trustees, though not the beneficiaries, had a right to appear as owners of the tolls under statute; and that both sets of petitioners were entitled to a general *locus standi*.

Where different sets of petitioners have distinct interests, it is no answer to them to say that they raise identical questions:

(*Per Cur.*) We should be bound to give a *locus standi* to every person whose rights appear to be injuriously affected by a bill even if there were a hundred. If the interests of petitioners are distinct, they have a right to be heard separately.

The *locus standi* of the hay and straw salesmen of the market held in Whitechapel, and owners, lessees, and occupiers, &c., was objected to, because (1) they have no lands or buildings within the limits of deviation, or which can be affected in such a manner as to entitle them to be heard according to practice; (2) the railways in question so far as they affect High-street, Whitechapel, will be made under the roadway, and will not interfere (otherwise than during their construction, and then only partially) with the surface of the street, and will not prevent the holding of the market in the street nor stop the traffic along the same; (3) the control and management of the street, and the regulation of the traffic, along the same, are matters which appertain to the Whitechapel local board, who have petitioned against the bill; (4) they allege nothing entitling them to be heard according to practice.

The *locus standi* of the trustees and vestry of the parish of St. Mary, Whitechapel, was objected to on the same grounds.

Michael, Q.C. (for hay and straw salesmen and owners, &c.): This market is an extremely important one, and has been carried on under statute for more than a century, occupying the centre of High-street, Whitechapel, and extending into two other streets. It is held three times a week, and some 60,000 or 70,000 waggons

loads of hay and straw are bought and sold there in the year. Under the powers of the bill it is proposed to make a part of the railway under High-street, and we allege that our market will be very seriously interfered with during the construction of the railway, and that any such interference would drive away business from the market. The petition is signed by the whole of the persons carrying on the business of hay and straw salesmen in the market, who have spent large sums in the construction of premises, abutting on High-street, for carrying on the trade incident to the market, and some of the petitioners are owners or lessees of such premises. They say that if the construction of the railway would not entirely prevent the holding of the market, it would interfere very prejudicially with such market, and would lessen materially the business, and interfere prejudicially with the ordinary traffic of the street. The case of the same petitioners came before the Referees in the *North Metropolitan Tramways Bill* (2 Clifford & Stephens, 90), and a *locus standi* was given to the petitioners. It may be said that there is a great difference between a tramway on the surface and a railway underneath the surface, but objection 2 admits that there will be an interference with the surface, so as to prejudice the market.

Saunders (for trustees and vestry of the parish of St. Mary, Whitechapel): The vestry of Whitechapel is an ancient body which appoints the greater part of another body, called the trustees. These trustees were incorporated by an Act of 1853, 60 of them being elected by the vestry, while the rector, churchwardens, and overseers of the parish for the time are *ex officio* members. Under the Act of 1853, the trustees levy the rates of the parish, and the Act also vests in them the ownership of the market, empowering them to levy tolls, including a charge of sixpence for every cart or waggon standing in the market, paying thereout twopence to the lord of the manor, Sir E. Colebrooke. From the balance of the tolls a certain proportion goes for market expenses, and of the remainder, one-half is to be applied in reduction of the annual paving rate assessed upon the occupiers of rateable property in High-street, that is to say, all the houses adjoining the site of the market, the other part being retained by the trustees for the use of the parish. Section 46 gives us the entire control and regulation of the market, the marginal note being "trustees to make orders as to position of carts and waggons." The promoters may contend that we are represented by the lord of the manor, whose *locus standi* is not objected to, but the admission of a petitioner claiming one-third of a toll cannot

preclude the appearance of those entitled to the remaining two-thirds, nor would the admission of the hay and straw salesmen deprive those interested in the usufruct of the tolls of the right of being heard.

Mr. RICKARDS: They are entirely distinct and separate interests.

Saunders: The promoters say that the surface of the ground will not be interfered with otherwise than temporarily or partially; but a temporary interference with property is, for purposes of *locus standi*, as effectual as if it were a permanent interference.

Mr. RICKARDS: Has that point ever been decided?

Saunders: I do not know that it has been distinctly decided; it has never been decided the other way.

Michael: In the *North Metropolitan Tramway* case, the injury complained of was that during the construction of the tramway, the passage to and from the place where the hay carts stood would be materially interfered with.

The CHAIRMAN: The proposed line of tramway did not interfere with the actual site on which the market was held.

Saunders: So I understand, and thus the principle to be gathered from that case is that interference with a market, though only for a time, entitles those interested in the market to be heard. The case of interference with a market is even stronger than the case of interference with land. We cannot force the hay and straw salesmen to come there.

Mr. RICKARDS: So that an interference of the market during the whole time of construction might be fatal to the market altogether?

Saunders: Yes; and our petition contains an allegation to that effect, namely, that any, even temporary, interference with the market "would be likely to permanently injure it by driving the trade elsewhere," whereby the parish would be deprived of a considerable revenue. The Railways Clauses Act provides for compensation to a landowner whose lands are temporarily taken, recognising the fact that temporary interference may be injurious to the owner.

Mr. RICKARDS: You assume that the construction of this railway underground will affect the surface?

Saunders: Their own objection admits that it will.

Michael: They must necessarily interfere with the surface. The main sewer runs along this street, and the main gas pipe.

Saunders: The promoters have served us with two notices in respect of this very street, yet they deny that we have any interest control over it. The fact is that, under

Act of 1853, the Whitechapel District board of works are expressly restricted from any control over the part of the road upon which this market is held, so that they do not represent us, and indeed have a distinct interest, because their object clearly would be to have the whole width of the street available for the ordinary street traffic.

Sir Mordaunt Wells (for promoters) : This case is to be distinguished from the *North Metropolitan Tramway* case. In that case there was to be a permanent occupation of a portion of the street, and the market being held in the open street it was assumed that you could not occupy a portion of the street without materially affecting the market. That is a very different thing from the construction of a railway underground. We do not object to the *locus standi* of the body which really represents the locality with reference to interference with the roads, but the District board of works for Whitechapel is the representative body, and the case is governed by the decision in the *Metropolitan Railway* case (2 Clifford & Stephens, 105), where the St. Pancras district board was conceded a *locus standi* against the erection of ventilating shafts in the roadway, to the exclusion of other petitioners.

Saunders : It is not on behalf of the public that we petition, but as private owners.

Wells : The interference with the roadway in this case will be of the slightest character, the line being constructed in lengths of some thirty yards, so that it will not be necessary to stop the traffic of the street where the market is held, and the hay and straw salesmen who petition have not the sole right to use this market; any person in the kingdom can bring his cart there.

The CHAIRMAN : Mr. Michael says he represents all the salesmen at this market.

Wells : The market is open to the whole of the public, and though the petitioning salesmen have a certain amount of interest in it, they have no exclusive right to sell hay there.

Mr. RICKARDS : It is like the case of freighters using a railway. A certain number of carriers and freighters come before us and say they carry on a large portion of the trade, and represent the trade. No doubt the trade is open to others, but if it appears that the petitioners are persons who carry on a large portion of the trade, we give them a *locus standi*.

Wells : I may take my cart into the market, and employ anybody I like to act as salesman. The market, therefore, is altogether independent of these salesmen; and, at all events, they have no such interest in it as entitles them to be heard on the narrow ground of interference with the roadway in a case where the same question

is raised by other parties. These persons are represented for this purpose by the Board of works, whose special duty it will be to watch the construction of this railway, and who will be heard on this ground before the Committee. As to the trustees, they are merely recipients of the tolls, which they must hand over to somebody else. They have no authority to spend a farthing themselves.

The CHAIRMAN : Still, they are by statute the absolute owners of these tolls.

Mr. RICKARDS : Suppose this was a bill to extinguish the tolls, would they not have a *locus standi*?

Wells : No doubt.

Mr. RICKARDS : They say the bill will diminish the amount of the tolls.

Wells : If these parties are allowed to be heard, it will make the fifth petition raising the same question.

Mr. RICKARDS : We should be bound to give a *locus standi* to every person whose rights appeared to be injuriously affected by a bill even if there were a hundred.

The CHAIRMAN : If the interests of petitioners are distinct, they have a right to be heard separately.

Mr. FORSYTH : One of the other petitioners might abandon his opposition.

Wells : It must not be assumed that the public boards would neglect their duty. These petitioners do not fairly represent the parties interested in the market. This is a general market open to all the public, yet there has been no public meeting.

Mr. RICKARDS : Under the Lands Clauses Act is there any provision for giving compensation to others than landowners for injury caused by the construction of a railway?

Michael : There is no compensation for injury to trade and trade profits.

Wells : If any substantial injury were done to this market by the temporary inconvenience arising from the construction of the railway, the owners of the market would, under the General Acts, be entitled to compensation, as they would be injuriously affected if the receipts of the market were thereby lessened.

The CHAIRMAN (after deliberation) : The Referees are unanimously of opinion that the *locus standi* in both these cases ought to be Allowed.

Wells : I presume the *locus standi* will be limited to interference with this market. These petitioners are not the owners of the property.

Mr. RICKARDS : Have the petitioners any interest in opposing the parts of the bill relating to capital, and so forth?

Michael: Yes; I intend to say that the bill is unnecessary.

The CHAIRMAN: We think the Petitioners are entitled to a general *locus standi*.

Agents for Hay and Straw Salesmen, &c.,
Baddeley & Sons.

Agent for Trustees and Vestry, *H. Mitchell*.

Petition of (8) PERSONS SIGNING THE PETITION OF OWNERS, &c.

Underground Railway—Limits of Deviation, Property Outside—Underpinning Clause—Interference with Property within 100 feet of Railway—Lands Clauses Consolidation Act, 1845, section 92—Compulsory Powers of Purchase—Exemption of Railway Company from Liability to Purchase Property Interfered with—Vibration.

In a bill authorising the construction of a railway under certain streets in the metropolis, the limits of deviation were drawn up to the kerb of the pavement, so as to exclude the house property on either side, but a clause was inserted empowering the promoters, if necessary, to "underpin or otherwise strengthen" the houses, &c., within 100 feet of the proposed railway, and the clause further proposed to provide that, notwithstanding anything contained in section 92 of the Lands Clauses Consolidation Act, 1845, the promoters should "not be compellable to purchase" the whole of any house, &c., with which they might interfere. A petition being presented from owners, lessees, and occupiers in the streets tunnelled by the proposed railway, it was admitted that certain of the petitioners whose property was situated within the limits of deviation were entitled to a general *locus standi*, but as to those petitioners who were affected only by the underpinning clause, it was contended that their opposition must be limited to this clause:

Held, that the proposed interference with the property of the petitioners thus affected gave them a right to be heard generally against the bill, though the property in question was outside the limits of deviation.

The bill was one "to authorise the Metropolitan and Metropolitan District railway companies to make certain railways for completing the inner circle and connecting the railways with the East London railway; also a new street and certain street improvements, and to confer various powers upon the corporation of London, the Metropolitan board of works, and other public bodies in reference to the undertaking, and for other purposes." The proposed railways were to be made under Aldgate, High-street, Whitechapel, and the Whitechapel-road; and the bill contained the following clause:—"And whereas, in order to avoid injury to the houses, cellars, and buildings within 100 feet of the railways, it may be necessary to underpin or otherwise strengthen the same: Be it enacted that the two companies may at their own costs and charges underpin or otherwise strengthen any such house, cellar, or building, and notwithstanding anything contained in the 92nd section of the Lands Clauses Consolidation Act, 1845, the two companies shall not be compellable to purchase the whole of any house or other building with which, or the cellars or other portions of which, they may interfere."

The *locus standi* of the petitioners was objected to, because (1) the persons referred to in the first schedule hereto annexed are not owners, lessees, or occupiers of any lands or buildings within the limits of deviation, or liable to be taken under the compulsory powers of purchase conferred by the bill; and the persons referred to in the second schedule hereto annexed are not owners, lessees, or occupiers of any such lands or buildings, or of any lands or buildings in or abutting upon any street, or that part of any street in or under which the railways referred to in the petition are to be made; (2) the railways are to be made under Aldgate, High-street, Whitechapel, and the Whitechapel-road, and the surface of these streets will not be interfered with otherwise than temporarily or partially; (3) as regards such temporary or partial interference the proper authority to interfere is the Whitechapel District board of works, who have the care and control of the streets, and not the persons mentioned in the said schedules, and the Whitechapel District board of works have petitioned against the bill; (4) the petitioners have no such interest as entitles them to be heard consistently with practice.

The number of signatures was, in the first schedule referred to, 235; in the second schedule, 81.

Saunders (for petitioners): There are 91 of the petitioners whose land is scheduled, and whose *locus standi* is not objected to. The property

of the 31 petitioners referred to in the second schedule of the objections is not upon those parts of the streets under which the railway is to go, and I am content that their names should be struck out of the petition. But as to the 235 petitioners in the first schedule, I claim for them a general *locus standi*, not in the ordinary sense of being landowners within the limits of deviation, but upon the ground that by the underpinning clause the promoters propose to vary the operation of the Lands Clauses Act with regard to the compulsory purchase of the property with which they may interfere. The railway is proposed to be made under the road, and the limits of deviation are clearly drawn with the object of shutting out people from being heard, though at the same time great injury may be inflicted upon them. The limits of deviation extend up to the kerb of the pavement on either side of the road, and having thus excluded the property which comes up to the kerb, the promoters contend that the owners of that property cannot be heard, although by the underpinning clause they admit that the construction of the railway under the road is likely to injure their property, and may let it down.

Sir Mordaunt Wells (for promoters): I am prepared to concede to these 235 petitioners a *locus standi* limited to the underpinning clause; but the petition also raises the question of vibration, on which they have no right to be heard.

Saunders: It would be absurd for me to have a general *locus standi* as to 91 of the petitioners, and a limited *locus standi* as to the others, and for me to say to the Committee, "now I am going to ask a question on behalf of the 235," or "I am going to ask this question on behalf of the 91." In the *Belfast Improvement Bill* (2 Clifford & Rickards, 69), petitioners representing property beyond the limits of deviation, but affected by the bill, had a general *locus standi*.

Wells (in reply): The number of signatures carries weight before a Committee, and, therefore, I press my objection to the general admission of the 235 petitioners.

Mr. Rickards: Can you underpin a man's house without interfering with his property in a manner which gives him a *locus standi* as a landowner?

Wells: Yes; because he is not a landowner in the ordinary sense of the term for *locus standi* purposes. He has no means of compelling the company to take any portion of his property. His rights are confined in this case to the obtaining of compensation for injuriously affecting his land by the underpinning; for the petition does not allege that the petitioners will be injuriously affected by the taking of their land,

but only that the property will be injuriously affected.

The CHAIRMAN: You must touch the structure, or the soil on which it stands, to carry on your underpinning, and does not that give a landowners' *locus standi*?

Wells: Underpinning is a mode of strengthening an existing building; you do not injure it by this operation, and you do not necessarily touch the fabric or even the soil on which it rests. The work may be done from the outside, upon the companies' freehold.

Sir J. DUCKWORTH: That is surely not the ordinary acceptation of underpinning. You will not, perhaps, go under the house if you can help it, but the words of the clause, "underpin or otherwise strengthen," give you the power to do so.

The CHAIRMAN: We are all agreed that the *locus standi* of these Petitioners must be *Allowed* generally. It is understood that the 31 names in the second schedule are struck out.

Agent for Petitioners, *Rees*.

Petition of (4) the WARD OF CANDLEWICK IN THE CITY OF LONDON.

Ward of City—Alderman and Ward-Clerk, Petition Signed by—Representation of Owners, &c., of Property, by—Parishes—Liber Albus, as to duties of Ward—Wardmote, holding of—Public Body complaining of Individual Injuries—Trade, right of Ward to represent—Streets, right of Ward to control—Commissioners of Sewers—Purprestures in City Ward—Lands Clauses Consolidation Act, 1845.

Against a railway bill affecting in various ways owners and others in a ward of the city of London, a petition was presented from the ward, signed by the alderman and ward clerk, complaining that the powers thus sought by the promoters were unjust and unreasonable, and further that the ward would be injuriously affected by the construction of the railway, and its traffic and trade seriously interfered with, both temporarily and permanently. The *liber albus* was quoted to show that the ward possessed certain jurisdiction in the case of "purprestures" or encroachments in streets, and that "the promotion of the well-being of the ward" was one of its duties:

Held, that the petitioners were not a body entitled to represent owners of property whose individual interests were affected, that they could not be treated for *locus standi* purposes as representing the trade of the ward, and were represented as to the streets of the ward by the Commissioners of Sewers.

(*Per Cur.*) "The right of a corporation to represent the trade of a town depends upon circumstances. We must be satisfied that they have a representative character with reference to the point before us."

The petition was entitled "the humble petition of the ward of Candlewick in the city of London," and was signed by "Thomas Dakin, alderman of the ward of Candlewick," and by "D. J. Hubbard, ward clerk." It alleged as follows:—"That a considerable portion of the said railway, in the bill called railway No. 1, will be made through your petitioners' ward, which will be injuriously affected by the construction of the railway and the works in connection therewith, particularly as the traffic and trade of your petitioners' ward will be most seriously interfered with, both temporarily and permanently, by the construction of the said railway as now proposed. That, "by clause 7 of the bill, power is sought by the two companies to make, and for ever after maintain, openings in any road or street under which the said railway No. 1 will pass, and to erect on the surface of the road or street balustrades or other things for the purpose of the said openings, or connected therewith. That your petitioners submit that the works sought to be authorized by clause 7 of the bill must suspend, or materially interfere with the traffic, and seriously affect the trade of the principal portion of your petitioners' ward, viz., of such principal streets as Cannon-street, King William-street, and Gracechurch-street; and that the proposed temporary and permanent openings will prove a serious impediment to the traffic of such principal streets as aforesaid, and will occasion most serious inconvenience and pecuniary loss to the inhabitants of the said streets. That by clause 8 of the bill the two companies seek power to underpin, or otherwise strengthen any house, cellar, or building within 100 feet of the said railway; and that, notwithstanding anything contained in the 92nd section of the Lands Clauses Consolidation Act, 1845, the two companies shall not be compellable to purchase the whole of any house, or other

building, with which, or the cellars, or other portions of which, they may interfere. Your petitioners protest most strongly against the powers sought by the two companies in the said clause 8 of the bill. And they submit that the powers so sought to be obtained are most unjust and unreasonable, and your petitioners further submit that no alteration of the law, as provided by the 92nd section of the Lands Clauses Consolidation Act, 1845, should be made in favour of the two companies, or any such alterations therein as are sought by the provisions of the bill, to the prejudice of your petitioners. Your petitioners submit that the construction or application of the word "interfere," forming part of the said clause 8 of the bill, may be so wide and general as to be manifestly unjust to your petitioners; and that the same is totally opposed to the spirit of the said Lands Clauses Consolidation Act, 1845. By clause 10 of the bill, the two companies seek power with respect to any lands which they may be authorized under the provisions of the bill to enter on, take, and use for purposes of the railways, new street, and works, and which are in or under the roadway or footway of any street, road, or highway, that they shall not be required wholly to take those lands or any part of the surface thereof, or any cellar, vault, or other construction therein or thereunder, held or connected with any house in any such street, road, or highway, but that they may appropriate and use the subsoil and under-surface of any such roadway or footway, and if need be may purchase, take, and use, and the owners of and other persons interested in any such vaults, cellar, or arches shall sell the same for the purposes of the railways, new street, and works, or any of them, and the purchase of any such cellar, vault, or construction, shall not in any case be deemed the purchase of a part of a house or other building or manufactory, within section 92 of the Lands Clauses Consolidation Act, 1845. Your petitioners strongly protest against the powers sought by the two companies in the said clause 10 of the said bill, and humbly submit that such powers would be most unjust and unreasonable, and that the same are against public policy and the spirit of the Lands Clauses Consolidation Act, 1845, and, if suffered to pass into law, might occasion irreparable mischief, and would entail serious pecuniary loss on some of your petitioners."

The *locus standi* of the ward of Candlewick, in the city of London, was objected to, because (1) the petitioners are not owners, lessees, or occupiers of any land or building within the limits of deviation, or subject to the compulsory powers of purchase conferred by the bill; (2) so

far as the objections of the petitioners relate to the taking of, or interference with, private property, the petitioners have no interest, but the right of petitioning rests with the parties whose property is proposed to be taken or interfered with; (3) so far as the objections relate to interference with public streets, the petitioners have no interest. They have no control or authority over the streets which, in the city of London, are under the management and control of the Commissioners of Sewers, who have petitioned against the bill; (4) the promoters were in no way parties to the bill for the Metropolitan Inner Circle Completion Railway Act, 1874, and had no opportunity of objecting to the introduction of clauses in that bill on behalf of the petitioners; (5) the petitioners have no such interest in the subject-matter of the bill as entitles them to be heard upon their petition consistently with practice.

Batten (for petitioners): Candlewick ward is the ward in which Cannon-street is situated, and the houses in Cannon-street are within the operation of the underpinning clause, and are also affected by another provision, under which the promoters may take portions of the cellars, and may buy such portions alone without being compelled to buy the whole property.

The CHAIRMAN: You had better first deal with the question whether the ward is entitled to represent the owners of property.

Batten: About 122 owners, &c., within the ward would be affected in the way I have described, and these gentlemen met together and came to the conclusion that it was not worth while for each of them to appear by counsel, but that they would move their representative body to protect their interests, which they accordingly did. The ward of Candlewick represents four parishes—St. Clement, Eastcheap; St. Mary Abchurch; St. Martin Ongar; and St. Lawrence Pountney. According to the *liber albus*, among other duties devolving on the ward is one of making inquest "if any purprestures are made in the streets or lanes," purpresture meaning encroachment upon the soil. Moved by the inhabitants, the lord mayor issued a precept to hold a wardmote on December 21st, and it was attended by 50 gentlemen whose premises in Cannon-street were affected by the bill. A resolution was carried unanimously "that the wardmote oppose the proposed bill for the construction of the Inner Circle in order to obtain a *locus standi* for the purpose of obtaining such terms as may render the construction of the railway as little injurious as may be practicable," and it was also resolved that petitions should be presented to Parliament signed by the aldermen and the ward clerk, this being

according to the *liber albus* the proper method of signing such petitions.

The CHAIRMAN: What is the injury to the ward which you allege?

Batten: You must take the ward as meaning the inhabitants thereof.

The CHAIRMAN: Granted that the ward are to some extent a representative body, you have to show that they are such a representative body as are entitled to petition against this bill. Are not the encroachments which they as a public body are competent to deal with, encroachments in the nature of those against public rights? How can they as a public body appear in respect of individual injuries?

Batten: The ward generally is affected in this way: Thirty or 40 houses will disappear from the ward owing to their being required for the purposes of this bill; and, therefore, when we levy our next rate, the remaining houses must bear an increased proportion of rate.

Mr. RICKARDS: Is that alleged in the petition?

Batten: Not specifically; but the petition alleges generally that the ward will be injuriously affected, and that the bill will entail "pecuniary loss on the inhabitants of the said ward."

The CHAIRMAN: That is, the inhabitants, not the ward collectively.

Mr. RICKARDS: You cannot club together a number of individual landowners who say they are injured, and appear as a representative body on their behalf.

Batten: I admit that it would not be competent for a number of landowners whose property was taken to call upon the parish or ward to bear the expense of appearing for them; but though the cellars of some of the petitioners may be taken, and others are liable to the underpinning clause, their houses will not be taken; and we, therefore, have a right to ask the governing body of our ward to appear and say, "here is a railway coming through the district which will injure the inhabitants of the district."

Mr. RICKARDS: According to practice, individuals injured in their property ought to appear in their own names.

Batten: The trade of the inhabitants is also interfered with. (*North British Railway Bill*, 1 Clifford & Rickards, 49.)

Mr. RICKARDS: Are the ward entitled to represent the trade of the district? Are they constituted the guardians of the trading interests of the ward?

Batten: Yes; the *liber albus* designates these, among others, as the duties of the ward: "the correction of faults, the removal of nuisances, and the promotion of the well-being of the ward." The latter expression means the well-

being of the inhabitants and the trade of the ward. The corporation of London petition, and their *locus standi* is admitted, but the promoters do not object that we are represented by the corporation, nor are the corporation the proper persons to represent us. We are not like the ward of an ordinary municipal borough, being exempt from the operation of the Municipal Corporations Act and from the Act relating to the Commissioners of Sewers. We also levy our own rates for paving and repairing the streets.

The CHAIRMAN: That is to say, a precept is sent you for as much as is required. You have to satisfy us that you have a representative character with reference to the point before us.

Batten: Corporations are allowed a *locus standi* as representing the trade of a town.

Mr. RICKARDS: That depends on circumstances. Here the persons to protest against this underpinning are surely the persons whose houses are affected?

Batten: I represent three classes—first, the freeholders whose cellars may be interfered with; secondly, the owners, &c., whose property is within the limits of deviation and whose houses may be underpinned; and, thirdly, those inhabitants of the ward whose trade will be injured by the bill. Some of the petitioners are in all three classes. A wardmote called in this way is the representative body of the inhabitants in the ward, and the Commissioners of Sewers do not represent the inhabitants as to injury to trade.

The CHAIRMAN: We are of opinion that the *locus standi* of the Petitioners must be *Disallowed*.

Agents for Petitioners, Hanly & Carlisle.

Petition of (5) JOSEPH HUGHES KERSHAW and WILLIAM HAINES.

Railway Warehouses, Access to—Temporary Obstruction of, by Construction of Works—Railways Clauses Consolidation Act, 1845, s. 53—Compensation, right to, under—Owner of Property not Scheduled or Taken—Street Scheduled, Power to Narrow—Street Authorities, Representation of Owners by—Penalty on Railway Company not Providing Substituted Road.

Owners of warehouses petitioned against a bill for authorising an underground railway, and complained that, owing to the narrowness of the street affording the sole access to

their premises, the communication with their warehouses for receiving and delivering goods would be entirely cut off during the construction of the proposed works, so that they might thus, through the non-fulfilment of engagements, be exposed to heavy losses for which no pecuniary damages they were likely to receive under the General Act could compensate them. They also complained that, as the promoters had scheduled part of the street in question, it might be permanently narrowed and their business therefore permanently injured. It was objected that the petitioners (1) had a remedy provided for them under the general law, and, as landowners whose property was not taken or scheduled, could not therefore, according to practice, be heard against the bill; (2) that as to the provision of proper safeguards for the street traffic during the temporary construction of the line, they were represented by the street authority, who had petitioned and would raise the necessary questions in the public interest; (3) that no permanent interference was contemplated with the street, which had merely been scheduled in compliance with S. O.; and (4) that, if entitled to appear at all, the petitioners could only be heard on the question of obstruction:

Held, that the petitioners were entitled to a general *locus standi*.

The petitioners were wool warehouse-keepers, trading under the style of Brown and Eagle, and were lessees for terms of years of extensive warehouses and premises in Haydon-street and Haydon-square, in the Minories. They objected that under the bill it was sought to acquire half the roadway of Haydon-street, which was the only approach for carts and vans, and the only way by which goods could be conveyed to and from the petitioners' warehouses; and the construction of the proposed railway, No. 1, under the Minories, which was only a narrow roadway, would entirely block up that roadway and the entrance therefrom into Haydon-street, and cut off all communication between their premises and the docks and other places. The petitioners further objected that the bill sought to authorise the construction of openings with balustrades round the same in any road or street under which the

proposed railway might pass, and they submitted that such powers ought, if granted, to be limited, and that no such opening should be made opposite to or near the opening of Haydon-street into the Minories, or any other side street or roadway over which heavy traffic such as that of the petitioners is conveyed, as the same might in a narrow roadway like that of the Minories materially interfere with and impede, and during construction might entirely stop the traffic and conveyance of goods into and from the side-streets and roadways communicating therewith. The petitioners also alleged that in their warehouses they employed 180 men, and that during the last year they received and delivered out from these premises wool to the value of over £2,000,000; and any interference with, or obstruction of, Haydon-street or the Minories, by which the free communication to and from their said premises would be stopped up or impeded, would cause a suspension of their business and inflict great and irreparable injury upon them, for which no pecuniary compensation they could obtain would adequately repay them.

The *locus standi* of the petitioners was objected to, because (1) they are not interested as owners, lessees, or occupiers in any land or building proposed to be taken or interfered with under the compulsory powers of purchase conferred by the bill; (2) the railway is to be made underground, and the petitioners' access to their premises will not be permanently interfered with, and provision is made by the Railways Clauses Consolidation Act, 1845, with respect to the temporary use of roads; (3) the management and control of the roads and streets (including the Minories and Haydon-street) are vested in the local authority, and the petitioners are not entitled to be heard upon the ground of interference therewith; (4) they are not entitled to be heard as individual ratepayers upon any question affecting the rating of the district, such right appertaining only to the general body of ratepayers or a large section thereof; (5) they have no interest entitling them to be heard consistently with practice.

Clerk, Q.C. (for petitioners): The mere act of constructing the proposed railway along the Minories would inflict irremediable injury upon us. The only other occupants in Haydon-square besides ourselves are the London and North-Western railway, who petition, and their *locus standi* is not objected to, because a small portion of their land is touched at another point. They also raise questions with regard to access to Haydon-square, but inasmuch as they have another access they might make arrangements with the promoters, leaving us altogether unprotected and unrepresented with regard to this obstruction. It may be said that the inter-

ference will be only temporary; that is to say, the railway may be so constructed by "cut and cover"—opening the ground, and then arching over—that the amount of obstruction to the access to our premises may be greatly limited; but on account of the position of our premises and the fact that Haydon-street, which is our only access to them, is only 10 feet wide, and is only capable of admitting one van to pass at a time, we might be prevented for a certain time from access to our premises altogether. The bill contains no provision limiting the promoters as to the length of road they may lay open at a time; but even should they be restricted to 30 yards at a time in this narrow street, our vans would be prevented for a month or two from taking the wool to or from particular steamboats, and the result to the petitioners in the failure to fulfil engagements might be irretrievable ruin for which no compensation we could receive would be adequate. The promoters say that the case of temporary interference is provided for in the Railways Clauses Consolidation Act, section 53 (before roads are interfered with, others to be substituted). All those provisions refer to country districts, where, if a road is temporarily obstructed, a fresh access can be made anywhere. Such provisions cannot apply to a town. Indeed, the promoters cannot provide such access in a town unless there is a distinct provision empowering them to buy certain land for the purpose of making a substituted access. It is true that the General Act imposes a penalty on the company if they do not substitute a road.

Mr. RICKARDS: They might prefer to pay the penalty rather than make another street?

Clerk: Yes; and meanwhile we might be liable for thousands of pounds damages for non-delivery of wool placed in our charge. The answer is: "Oh, you must get the road surveyor, or somebody acting on behalf of the road authority, to proceed against the company for the penalty of £20 per day."

Mr. RICKARDS: That provision seems to be intended for the protection of the road authorities, rather than the protection of private individuals?

Clerk: Yes; but then there is a further provision, that if an individual suffers injury by proper access not being given to his premises through the construction of works, he may bring an action in one of the superior courts. Such a right of action would give us no sufficient protection, because, as I have said, for a considerable period of time the whole access into Haydon-square must be entirely blocked up by the proposed works.

Mr. RICKARDS: How is the company, against whom such an action might be brought under

that clause, to obtain powers to make a substituted road in the city of London?

Clerk: If it is not in their power to do so, and they have laid out the line so as to inflict this injury, they ought to suffer for it. At all events we say that some provision should be inserted in the bill to secure our uninterrupted access to our premises. It is no answer to us to say that the railway would find it difficult to provide another access. That is their fault for not so arranging their plans as to provide it. Then, again, a part of Haydon-street is within the promoters' limits of deviation, and we allege that the proposed acquisition of this land will entirely destroy the access to our premises.

Sir Mordaunt Wells (for promoters): We have no power to acquire a public street.

Clerk: Yes, you have, under Clause 5 of the bill; just as Sun-street was acquired by the Great Eastern company. The promoters may acquire absolutely half of Haydon-street, and may, if they choose, either lay it open or work underneath it. The bill is brought forward with the assistance of the Metropolitan board of works, the Whitechapel board, and the Commissioners of Sewers. The property is to be taken probably for speculative purposes. By clause 62 it is provided that the two companies and the corporation may agree with regard to the construction of the railways or of any of the other works. Thus, the bill is one not merely for making railways, but for making streets, and it is not fair in a scheme of this kind to interfere with the sole access to premises of this great value without any sufficient guarantee that some other equally good access will be provided. In the *South-Eastern Bill* (1 Clifford & Rickards, 258) the *locus standi* of petitioners was allowed on account of damage to their premises by interference with lights, though none of the petitioners' land was taken.

Mr. RICKARDS: We went rather far in that case.

Clerk also referred to the *London and North-Western Railway* case (2 Clifford & Rickards 119).

Wells (in reply): The principle of the *South-Eastern* case ought not to be extended. That was the first case in which the rule was set aside that a petitioner whose remedy is provided by the Lands Clauses Consolidation Act has no *locus standi*. Where the law of the land provides a remedy, you do not look to see whether or not that remedy will give complete satisfaction. In the *South-Eastern* case the Court had great hesitation in coming to the conclusion that the principle hitherto acted upon should be departed from.

Mr. RICKARDS: We said it was an exceptional case.

Wells: There are no exceptional points in this case.

Mr. RICKARDS: In several cases we have decided that where the effect of constructing works would be to block up an approach to premises, petitioners were entitled to a *locus standi*.

Wells: In those cases the obstruction was not a temporary, but a permanent one, where it was proposed to divert the street, and deprive the petitioner of the user of that street in carrying on his trade. The following cases are in my favour:—*Caledonian Railway Bill* (Smethurst, 106), *London and North-Western* case (*Ib.* 115).

The CHAIRMAN: Your bill authorises you to take part of Haydon-street?

Wells: I have a complete answer to that argument. It is true that we schedule a portion of the street, but that is only because a railway company are bound under the Standing Orders to schedule any street with which they seek to interfere. You must not assume because you find a street scheduled that a railway company has therefore the power to acquire it. Here we have not the remotest intention to take any part of the street. You cannot, in fact, acquire a public street by scheduling it; it is not like the land of any ordinary landowner. A street must be scheduled, because you cannot stop it up temporarily, or stop the traffic, unless you schedule it. The only object in scheduling Haydon-street here is to facilitate the construction of the proposed works. No power of otherwise dealing with Haydon-street is sought in this bill. That power was obtained in the Act of 1877.

The CHAIRMAN: If promoters choose to schedule certain properties in their bill, petitioners are entitled to assume that they have done it for a definite purpose?

Wells: Other parties are interested in the construction of the proposed works besides the petitioners. The general public are interested in the preservation of the streets, and the proper representatives of the public interests in the Minories, including the interests of the petitioners, are the Whitechapel board of works. The board have petitioned, and no doubt will raise the question of proper access in the streets. The corporation of London also oppose the bill, and may raise the same questions. The petitioners complain that they will be affected in carrying on their trade in Haydon-square. So will every person who has any communication with Haydon-street or the Minories; but it does not follow, because these inconveniences will arise, that at every point on the line you are to give a *locus standi* to people who may be injuriously affected during the construction of the line. Nor does it lie in the mouth of an owner whose land is not taken or scheduled, and who merely

complains of an obstruction to the right of way to his premises, to object to our acquiring land.

Mr. FORSYTH: The petitioners say that your taking of the land will obstruct the access to their premises?

Wells: If you give them a *locus standi* at all, they should be limited to the question of obstruction. The land to be acquired is upon the deposited plan, and ample notice is given to the public authorities as to what we propose to do. The Whitechapel board of works and the corporation of London are thoroughly aware of what is intended to be done under this bill, and those bodies represent the petitioners in respect of our powers to take that land.

Mr. RICKARDS: If you schedule this land you take power to narrow the street?

Wells: We hold power to take the land for the purpose of widening the street.

The CHAIRMAN: But the land being scheduled, you would have power to narrow the street?

Wells: By the Act of 1877, which we do not repeal, there is a clause providing that we are to purchase certain properties and sell them to the Metropolitan board for the purpose of widening the street to an extent not exceeding forty feet in width.

Clerk: You need not exercise that power.

Wells: We must do so. Three times we have applied to Parliament to be released from this obligation, and three times we have been refused. It is a provision under which the Metropolitan board can, at any time, compel us to widen the street.

The CHAIRMAN: Suppose your bill passed as deposited, would it not be a nice question for a court of law to decide whether, with these plans annexed, it would not over-ride the Act of 1877?

Wells: I say, advisedly, that under the bill we have no power to narrow the street.

The CHAIRMAN (after deliberation): In this case the Referees are of opinion that the *locus standi* must be *Allowed*.

Wells: Generally?

The CHAIRMAN: Yes.

Agents for Petitioners, Durnford & Co.

19th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Petition of (6) The COMMITTEE FOR THE MANAGEMENT OF THE AFFAIRS OF THE CHURCH AND PARISH OF ST. DUNSTAN IN THE EAST, AND OTHERS.

Committee for Managing Parochial Affairs—Representation of Owners or Ratepayers by—Rating Body in Parish—Right of, to Petition on behalf of Ratepayers—Ratepayers and Vestry, Distinction between, as Petitioners—Houses to be Pulled Down—Rateable Value of Parish Diminished thereby—Extra Burdens thereby imposed on Remaining Ratepayers—Rates, Temporary Deficiency in, until Construction of New Buildings—Railway Company, Liability of, to make good Deficiency.

A committee constituted under a local Act as trustees of the church in a metropolitan parish, and recipients of the rates levied therein, opposed a bill for the construction of a railway and the making of a new street through the parish, the grounds of opposition being the loss in rateable value which the parish would suffer, through the taking down of houses, or parts of houses, and the increased burdens thereby cast upon the remaining ratepayers. It was objected that the petitioners, being merely recipients of the rates, were not prejudicially affected by the bill, and that the proper persons to petition were the ratepayers, upon whom increased burdens might be cast, whereas the ratepayers had neither joined in the petition, nor authorised it; it was also objected that the rateable value of the parish would be enhanced instead of deteriorated by the proposed works:

Held, that the petitioners properly represented the ratepayers upon the issue raised, and were entitled to a *locus standi* against the clauses which would authorise the compulsory taking of property within the parish.

(*Per Cur.*) Ratepayers and vestries may have distinct interests. Thus, owners of property have a right to object to any bill, the effect of which may be to subject their property to rates to which it was not subject before. That is an injury to individual property; but when a bill is proposed which may diminish the aggregate rateable value of a parish, the legal and constituted authority have a right to be heard against it.

(*Per Cur.*) The argument that proposed works will ultimately increase the rateable value of property within a parish cannot be accepted

as valid against petitioners complaining that the rateable value must at all events be diminished temporarily during the construction of those works. "We see a certain immediate loss while the railway is being constructed; what the result may be afterwards is purely speculative."

The petitioners described themselves as "the committee for the management of the affairs of the church and parish of St. Dunstan in the east, in the city of London." This committee consisted of the rector, churchwardens, overseers and guardians, and certain inhabitants of the parish duly appointed by the parishioners at Easter, every year, according to ancient custom. The petitioners, the churchwardens and overseers, alleged that they were required from time to time to make all rates necessary for the relief and maintenance of the poor of the parish, and for paying all sums of money directed by law to be paid out of such rates. The petitioners complained that the powers sought by the bill to acquire houses and property within the parish would prejudicially affect the rateable value of the parish and greatly diminish the amount of rates leviable by the petitioners. They further alleged that power was sought by the bill, under pretence of constructing the proposed railway No. 1, to acquire a large extent of valuable property extending to a considerable distance from it, quite unconnected with it, and not required for the purpose thereof, which lands and property would, as was apparent on the face of the bill, be handed over to, or acquired by another authority or authorities; and the petitioners submitted that such a taking of lands and property in a populous and valuable part of their parish for railway, or any other purposes, was calculated to seriously injure and cast an extra cost and burden on the rest of the parish and the ratepayers thereof, by reason of the deficiency in the rates which would be caused thereby while the railway and works were being constructed, and before the same were completed and assessed, and by the pulling down of buildings, by which the land would be rendered vacant and unproductive until covered with houses and assessed to the rates, and no provision was inserted in the bill similar to that inserted in other bills of the like kind compelling the promoters to make good any deficiency in the rates caused by the taking and using of lands for the purposes of the company, or other purposes for which the land might be acquired. The petitioners also objected to the underpinning clause, and alleged that they were

apprehensive that the proposed railway might render unsafe the parish church and graveyard; and they said lastly that there was no public ground to justify the grant of the powers sought by the promoters.

The *locus standi* of the petitioners was objected to, because (1) they are not interested as owners, lessees, or occupiers of any land or building within the limits of deviation, or subject to the compulsory powers of purchase conferred by the bill; (2) so far as the objections of the petitioners relate to the taking of or the interference with private property the petitioners have no interest, but the right of petitioning rests with the parties whose property is proposed to be taken or interfered with; (3) so far as the objections of the petitioners relate to interferences with public streets, the petitioners have no interest. They have no authority or control over the streets, which in the city of London are under the management and control of the Commissioners of Sewers, and the Commissioners have petitioned against the bill; (4) the transfer of property to the promoters for the purposes of the undertaking will not exempt it from rateability and does not give the petitioners a right to oppose the bill upon that ground; (5) the petitioners have no such interest in the subject-matter of the bill as entitles them to be heard upon their petition against it consistently with practice.

Pember, Q.C. (for petitioners): This committee is a somewhat peculiar body. It has existed under that title in the parish of St. Dunstan practically from time immemorial, and the members of it are elected annually. The records of their proceedings, in respect of the general management of the affairs of the parish, extend over a century. No doubt, therefore, they thoroughly represent the parish. I need not go into the question of the apprehended injury to the church and graveyard.

Sir Mordaunt Wells (for promoters): The church is 130 feet from the limit of deviation.

Pember: The important point is the question of loss in the rateable value of the parish which may be occasioned by the works. I do not know of any decision on this question of increased rating in a parish by the taking down of houses.

Mr. RICKARDS: The question seems to have been raised in the *Midland Railway Additional Powers Bill* (2 Olifford & Stephens, 39).

Pember: That was not a case in which land was taken and buildings, paying rates, were destroyed. It was merely inferential damage to existing property; it was only, after all, an injurious affecting; it was not absolute destruction of rateable property. That case does

not dispose of the question raised by my petition; and I can show that both before and after that decision, Parliament has distinctly recognised the interest of vestries in these matters by inserting in a number of private Acts clauses exactly meeting the gravamen raised by my petition.

The CHAIRMAN: What is the particular dealing with property under the bill which you say will affect the rates adversely?

Pember: Pulling down a vast quantity of houses on each side of the line. The promoters will destroy, I am told, from £12,000 to £15,000 a-year of rateable property.

Mr. RICKARDS: There is also power to form a new street, and the railway itself will be rateable.

Pember: But they will not form the new street till it suits them; in the meantime these large sites will lie vacant. I refer to the following Acts in which railway companies are made liable for assessment equal to the present rental of the houses taken down:—The London, Chatham and Dover, Metropolitan District Act, 1860; the Charing Cross Railway Act, 1864; Metropolitan and St. John's Wood, London, Chatham and Dover Act, 1866; Metropolitan and South-Western Junction Act, 1872; Metropolitan and District to Hammersmith, Metropolitan Railway Act, 1877.

Mr. RICKARDS: Are there no public Acts dealing with the question?

Pember: No; Parliament has recognised that under the peculiar circumstances of this metropolis there shall be peculiar legislation in favour of vestries, where railway companies propose to do what is to be done here. If you had known of those enactments in those private statutes it is possible that the decision in the case in 1870, to which reference has been made, might have been different.

Mr. RICKARDS: In that case the alteration was of a peculiar nature; it was simply to remove the roof or covering from a portion of the railway and make it an open cutting. One does not see how, *prima facie*, that would have any considerable effect on the rates.

Sir Mordaunt Wells (for the promoters): This is an attempt to establish for the first time under the decision of this Court the *locus standi* of a supposed representative body on behalf of the ratepayers. In the first place, I deny that the doctrine of representation applies in a case like this. The parties affected here are the owners of property who will have to pay additional rates. Supposing there to be a diminution of the general rates, the parties whose property is affected in that way cannot delegate the representation of their interests to another

body. There is not a single case giving a right to a body to appear on behalf of the ratepayers who would be damnified in respect of their property by the works of a railway. Whether ratepayers have a right to petition is another question. I am contesting the right of the petitioners to appear on behalf of the ratepayers on a question like this. All they do is to levy the rates; they do not expend the rates; the expenditure rests with the guardians and the city commissioners of sewers. The petitioners are only agents for the collection of the rates. The parties to be injured are the ratepayers; and if a petition had been signed by a certain number of ratepayers who complained in respect of additional burdens being placed upon their property, the position would have been different; but the petitioners are the trustees of the church.

The CHAIRMAN: Not simply trustees of the church, but recipients of the rates.

Sir Mordaunt Wells: I admit that.

Mr. RICKARDS: At our last sitting we gave a *locus standi* to the trustees of the vestry of Saint Mary, Whitechapel, being parties who were authorised to receive the rates.

Sir Mordaunt Wells: They were recipients of the rents of the market. That is a totally different thing—that was a property which they were connected with.

Mr. RICKARDS: But they received the money for public purposes.

Sir Mordaunt Wells: The parties damnified, if any at all, are the ratepayers. Upon that point I refer to the *St. Helens Borough and Improvement Bill* (1 Clifford & Stephens, 52), and I rely also on your decision on this bill in the case of the ward of Candlewick. The parties who have been admitted to raise this question have always been ratepayers. There is no pretence for saying that the doctrine of representation can apply to this case. The petitioners might have had a public meeting of ratepayers, and they might have had the petition signed by ratepayers. There is no authority to show that, in the absence of such authority, the vestry in a matter of this sort are entitled to act for the ratepayers, and they do not allege that they themselves are injured.

Mr. RICKARDS: They say it will injuriously affect the rateable value of the parish, and they are the trustees for the parish.

Sir Mordaunt Wells: They must have authority from the parishioners expressing their opinion upon this question; they cannot of their own motion come to Parliament and object to the bill. If any representative body can appear for the ratepayers at all, it is the commissioners of sewers and the guardians of the city union,

who have the expenditure of this rate. Suppose at the same time that these parties were petitioning Parliament the whole of the parish approved of the bill in public meeting, being of opinion that in other cases like this the rateable value of property had increased, and they said, "We are ratepayers who would be damnified, and we approve of this bill;" can it be alleged that under those circumstances this body would be entitled to be heard complaining of injury to the ratepayers?

Mr. RICKARDS: The Vestry are by Act of Parliament made the representatives of the parish in respect of the collection and receiving of these rates, and if in their opinion the interests of the parish in respect of its rateable value will be deteriorated, it seems to me that they are entitled to petition on behalf of the parish. They are the legal guardians of the interests of the parish as regards its rateable value.

Sir Mordaunt Wells: There has been no decision of this Court giving authority or power to a vestry or any other body on a question of this kind.

Mr. RICKARDS: It seems to me that the interest of the ratepayers is one thing, as in the *St. Helen's* case, and the interest of the vestry is quite a different thing. The interest of the ratepayer is this: he has a right to object to any bill, the effect of which may be to subject his property to a rate to which it was not subject before. If, for instance, the bill proposes to include within the rateable area certain property not within it before, the occupier of that property has a right to say, "You are going to put a charge upon my individual property to which it was not before subject, and thereby you make me a ratepayer, whereas I was not a ratepayer before, and that is an injury to my individual property." This is an entirely different case. Here you have a public body which, by the authority of the law, is made the trustee and guardian of the rates of the parish, and when a bill is brought forward which may affect the rateable value of the parish, the legal and constituted authority has, as it seems to me, the right to come in and say, "We desire to be heard against this bill, because it will diminish the aggregate rateable value of the parish." Those two things are quite distinct.

Sir Mordaunt Wells: But you have decided over and over again that there must appear on the petition such injury as will entitle a party to be heard. I deny that upon the face of this petition any injury whatever is alleged, except a remote injury to owners of property, who may be assessed at a larger sum than they were assessed before.

Mr. RICKARDS: There is this allegation, that the "powers and provisions in the bill will, if sanctioned by Parliament, prejudicially affect the rateable value of the parish, and greatly diminish the amount of rates leviable by your petitioners."

Sir Mordaunt Wells: I say that is not sufficient for a *locus standi*. If there is injury to property by increased rating, the proper persons to petition are the ratepayers. Here there is not a single allegation that injury will be done to the petitioners—the vestry.

Mr. RICKARDS: The imposition of a rate upon property not before liable to it, or an increased rate upon that property, would naturally have the effect not of diminishing the whole rateable value of the parish, but of increasing it. There the ratepayers would be entitled to be heard, but here it is the opposite.

Sir Mordaunt Wells: One of my arguments is that, according to all experience, the rateable value of a parish is always improved by a railway going through it.

Mr. RICKARDS: There is a temporary loss.

Sir Mordaunt Wells: But that temporary loss is recouped subsequently by the larger rateable value when the whole of the land is built upon; the rateable value of the property would then be five times what it is now.

Mr. FORSYTH: Why are you to assume that?

Sir Mordaunt Wells: In every single case you will find it has been so.

Mr. RICKARDS: You might as well tell a landowner, "You are not to be heard because your property will be greatly increased in value after the railway is made." We see a certain immediate loss while the railway is being constructed; what the result may be afterwards is purely speculative.

Sir Mordaunt Wells: As to the Acts of Parliament cited by Mr. Pember, the value of cases of that kind is nought, because you cannot tell under what circumstances those clauses were put in; it might be to prevent opposition. I could produce barrows full of Acts of Parliament—many of them referring to this Metropolitan railway—where no such provision is introduced. You must over-rule the *Midland Railway (Additional Powers)* case if you give a *locus standi* in this case. This committee might have had the ratepayers joined in the petition, but they come without the authority of the ratepayers. In the *St. Helen's* case and the *Midland* case, the vestry had the same interest as the petitioners have in this case.

Mr. RICKARDS: In the *Midland (Additional Powers)* case it does not appear that there was any injury to the rateable value.

Sir Mordaunt Wells: The decision of the Court

rested on the broad principle that the vestry ought not to appear because a landowner who was seriously injured did appear.

Mr. RICKARDS: I do not think you can infer that.

Sir Mordaunt Wells: If the bill took power to confer upon somebody else the right to collect rates, or if it touched the church, or interfered with the scope of the local Act upon which the vestry are acting, they might appear, but they cannot appear where all that is alleged is an injury to ratepayers. It is an important question you are now called upon to decide, because if you admit these parties where are you to stop? Any public body who are merely the recipients of rates will claim a right to be heard, though in no way injuriously affected, to raise the question as to the compensation with respect to land which is left waste during the time a railway is being constructed. I submit that if the petitioners are to be heard at all, it must be only in respect of the rating question. They cannot be heard in respect of the construction of the line from one end to the other.

The Referees deliberated.

The CHAIRMAN: In this case we think a *locus standi* should be allowed, and we do not think there would be any advantage in limiting it, because the petition itself limits it to the property the rates of which are received by the petitioners.

Sir Mordaunt Wells: The petition is much wider. First the petitioners object to the preamble.

Mr. RICKARDS: They can only be heard in support of the allegations of their petition.

Sir Mordaunt Wells: They say "your petitioners submit that in order to avoid the disfigurement and unsightly appearance and impediments caused to the public streets and thoroughfares, &c." That opens a question which I should have contended was entirely in the jurisdiction of the board of works, and one which these petitioners have no power to raise as trustees of the church. Then they go into other questions.

Mr. RICKARDS: We thought we should not be prejudicing the promoters by giving a general *locus standi*, because we considered that they were completely protected by the allegations of the petition, but if you think that possibly the petitioners might by having a general *locus standi* get an opportunity of going beyond what we think they are entitled to, we should be quite willing to limit it to section 5, which gives a power to take the land.

Durnford (Parliamentary agent for petitioners): We have no objection to being limited to the clauses which affect the rates, but there is more than clause 5 which affects the rates.

The CHAIRMAN: The principle of our decision is, that we give a *locus standi* so far as affects any lands, the rates of which are received by the petitioners. If you can settle what clauses that decision will apply to, we will give the *locus standi* accordingly.

Durnford: We do not claim to be heard with regard to the underpinning, but there is a clause by which the promoters may take cellars and any property under the pavement without taking the whole house. There are very large wine cellars in some of these houses, and if you take away those cellars the houses will become empty, so that the rateable value of the parish will be affected.

Sir Mordaunt Wells: That is a question that will be dealt with by the landowners.

Mr. RICKARDS: Two persons may be injured by one Act.

Durnford: Clauses 5 and 10 cover our opposition.

The CHAIRMAN: Clauses 5 and 10 seem to come within the principle of our decision.

Locus standi Allowed against clauses 5 and 10, and so much of the preamble as relates thereto.

Agents for petitioners, Durnford & Co.

Petition of (7) COLMAN DEFRIES AND OTHERS.

Agreement between Railway Company and Landowners—Authorised Railway, Practical Abandonment of—Construction of Substituted Line by Third Companies—Agreement thereby Superseded—Landowners' Opposition to Substituted Line—Privity between Petitioners and Promoters, Absence of.

The Inner Circle railway, which obtained statutory powers in 1874, 1876, and 1878, entered into agreements with a firm of manufacturers for the conditional purchase of certain portions of their business premises. These premises had been acquired by Messrs. Defries with a view of rebuilding their works, after they had been driven from their original position by another railway line. The Inner Circle company, however, neither made their line, nor obtained powers for its abandonment, and the agreements accordingly had been from time to time renewed. A bill was now promoted by

two other railway companies for the construction of a railway in substitution for that of 1874, the two lines being physically inconsistent with each other. The petitioners, though none of their property was within the limits of deviation, alleged that the effect of the bill would be to prejudice their rights under the agreements, and asked to be allowed to appear before the Committee to urge that, if the new line were authorised, the liabilities of the Inner Circle company should be transferred to the promoting companies, and that these companies should also compensate the petitioners for any injury they had sustained through the non-execution of the agreements :

Held (without reply from the promoters), that, as the bill did not propose to take over the undertaking of the Inner Circle company, or to relieve that company from their engagements, statutory or otherwise, there was no privity between the petitioners and the promoters, and that the remedy of the petitioners must be pursued upon the usual application to Parliament by the Inner Circle company, the actual parties to the agreements, for leave to abandon their undertaking.

The petitioners alleged that they were the owners of large business premises situated in Houndsditch and Gravel-lane, in the city of London, in which they carried on business as chandelier manufacturers. In 1867 the Metropolitan railway company obtained powers to take compulsorily a portion of these premises, and the petitioners, prior to November, 1873, purchased and pulled down certain adjoining houses in order to acquire a site in substitution for that so acquired by the Metropolitan company. In 1874 the Inner Circle railway company obtained an Act for the construction of their line ; and, under agreements between that company and the petitioners, arrangements were made for the taking of part of their premises by the company. These agreements were from time to time renewed, and were to be binding upon any company to whom the Inner Circle company might transfer their undertaking. The petitioners were now apprehensive that the Inner Circle company might not commence the construction of the authorised line for which the petitioners' premises were agreed to be taken, inasmuch as

the railway proposed by the bill would supersede the necessity for that of the Inner Circle company ; indeed, it was physically impossible that the latter line could be constructed in addition to the line now proposed. Under these circumstances, the powers sought by the bill would amount to a practical transfer of the powers of the Inner Circle company to the promoters, but whilst disabling that company from carrying out their agreement with the petitioners, the bill did not, as it ought to have done, transfer the obligations of the Inner Circle company to the present promoters.

The *locus standi* of the petitioners was objected to, because (1) the promoters were not concerned in the promotion of the Acts passed in 1874, 1876, and 1878 relating to the Metropolitan Inner Circle completion railway company, or to any of those Acts ; nor were they parties to any of the agreements between the Metropolitan Inner Circle completion railway company and the petitioners, referred to in the petition ; nor are they in any way responsible or liable for any obligations or engagements undertaken or entered into by the said company, whether under the said agreements, or any of them, or otherwise, under the Acts ; (2) the bill does not propose to repeal the said Acts of 1874, 1876, or 1878 ; nor does it give the promoters any power of controlling the action of the Inner Circle completion company, whether to proceed with, or abandon their undertaking ; (3) the petitioners are not interested as owners, lessees, or occupiers in any land or building within the limits of deviation, or liable to be taken and interfered with under any of the powers conferred by the bill ; (4) the property described or referred to in the petition as belonging to the petitioners, and in respect of which the said agreements were entered into with the Metropolitan Inner Circle completion railway company, is not upon the railway described in the petition as the authorised railway No. 1, part of which, it is alleged in the petition, cannot be constructed as well as part of railway No. 1 proposed to be authorised by the bill, but on the railway described in the petition as the authorised railway No. 2, and at a distance from any portion of the undertaking proposed to be authorised by the bill ; (5) even if some part of the authorised railway No. 1 cannot be made, as well as part of the railway No. 1 proposed to be authorised by the bill (which, however, the promoters do not admit), there is nothing whatever in the bill to prevent the authorised railway No. 2 from being made, on which railway the petitioners' said property is situate ; (6) whatever remedies or means of redress the petitioners may have against the Inner

Circle completion railway company, if they do not proceed with their undertaking, they have no ground consistently with practice to be heard upon their petition against the bill.

Gates, Q.C. (for petitioners): It is true that the bill does not authorise the taking of the petitioners' premises, but they would have been taken for the construction of the Inner Circle line, which was authorised in the year 1874, and has been kept alive by subsequent legislation up to 1880. As we allege in our petition, a large part of railway No. 1 proposed by the bill traverses the same ground as No. 1 of the Inner Circle Act of 1874, and, therefore, the two lines cannot co-exist. We made an agreement with the Inner Circle company, by which our rights were preserved, and by which arrangements were made with respect to the taking of our premises; and though the Inner Circle company are not here to abandon their line, and though the promoters of this bill cannot now formally abandon that line, still, inasmuch as the two lines cannot physically co-exist, the bill is practically for the abandonment of the old line. When the line goes before the Committee, the probability is that some agreement may be made with the Inner Circle company behind our backs.

Mr. RICKARDS: Has the property, in this case, passed to the company?

Gates: No; there is merely a contract. I do not think the property has passed in equity. The agreement is merely conditional upon certain events happening. I refer to the case of the *North-Eastern (Additional Powers) Bill* (1 Clifford & Rickards, 108).

Mr. RICKARDS: Does your agreement relate to anything except the purchase of property?

Gates: No. We have had these Parliamentary powers hanging over our heads for a very long time, and we anticipate that inasmuch as the two lines cannot co-exist, the Inner Circle company may agree with the promoters, and we may find that the people we have agreed with, instead of being a going concern, will have ceased to exist, and we shall have a right without a remedy.

Mr. RICKARDS: They cannot cease to exist without Parliamentary powers.

Gates: It would be very difficult for us to enforce our rights, which would be merely legal rights, without fruitful remedies against them. We ask that we may be before the Committee so as to protect our rights, whatever they may be worth, and not have those rights transferred from one company to the other without having a voice to complain.

Mr. FORSYTH: How can you protect your rights under this bill? You are not affected by this bill.

Gates: They do not touch our land I admit.

Mr. RICKARDS: The company who have made this contract with you cannot be extinguished and put an end to without the further action of Parliament. To get rid of their complete existence, they must come to Parliament, and then would be your time to appear against them.

Mr. BRISTOW: I see in the agreement the probability is foreseen of the company transferring their undertaking to somebody else. It is perfectly plain that the promoters could not take your contractee's concern except with the sanction of Parliament. Your agreement with these parties would give you a *locus standi* beyond all doubt upon a bill proposing to do that, but the bill before us contains no such powers.

Mr. RICKARDS: Any agreement which the Inner Circle company and the promoters make behind your back cannot affect your rights under the contract.

Gates: No doubt we should have a legal right against the company, but we do not want to be put to the enforcement of a simple legal right. What we desire is to make some terms with a really going concern.

Mr. FORSYTH: I see, by clause 8 of the agreement, that the agreement is to be of no force till the works are commenced.

Gates: Yes, and the works have not been commenced yet. Wherefore, though the agreement is binding, the provisions for transferring the property do not come into force. In the case of the *Glasgow and South-Western Bill* (2 Clifford & Stephens, 144), a case of an abandonment bill, a landowner whose lands had been taken was allowed a *locus standi*.

Mr. RICKARDS: He had not parted with his lands absolutely, but only subject to the condition that he was to have his right of pre-emption, which the bill proposed to take away.

Gates: On the grounds that we are landowners under an agreement with the existing company, and that under the bill that existing company will be practically extinguished, we ask to be heard.

Mr. RICKARDS: The company will not be legally extinguished under this bill.

Gates: No; but the promoters will have to acquire the powers of the Inner Circle company, or will have to extinguish them. The two lines cannot co-exist, and therefore our rights against the Inner Circle company will be prejudicially affected, and our status as landowners will be injured.

Mr. FORSYTH: If you did appear before the Committee, what could you ask to be done in the bill? Would you ask to have your agreement

transferred to the two companies now before Parliament?

Gates: That is one thing I should ask. The Inner Circle company have prevented our dealing with our land for six or seven years—land which we bought for the special purpose of our business. The promoters must get the Inner Circle company out of the way, and one thing we desire is that the promoters should take over all the liabilities of the Inner Circle company, so far as we are concerned, and compensate us. It would be one thing to be compensated by them and another thing to be compensated by a moribund company who have had a great difficulty in raising capital.

Without hearing Sir Mordaunt Wells,

The COURT Disallowed the *locus standi* of the Petitioners.

Agents for Petitioners, *Glynnes, Son, & Church.*

Agents for Bill, *Sherwood & Co.*

METROPOLITAN RAILWAY BILL.

Petition of Mr. CARTER.

19th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Extension of Time for Construction of Railway—Owner of Villa—Injury to Amenities and Value of Residence—Complaint against past Legislation.

Against a bill for an extension of time for the construction of a railway a petitioner claimed to be heard as the owner of a villa residence, which he complained would be overlooked and rendered less desirable and valuable by fronting on the line of railway. He also complained that, owing to the delay in the construction of the line, he had purchased his villa in ignorance of the direction the line would take, although subsequently to the authorisation of the railway by Parliament:

Held, that as no fresh powers affecting his property were conferred by the bill, his grievance (if any) was the result of past legislation, and accordingly his *locus standi* must be disallowed.

The *locus standi* of the petitioner was objected to, because (1) the subject-matter of the petition is entirely *dehors* the bill; (2) the railway of which he complains is being constructed in accordance with the provisions of the Act by which it is authorised, and the bill does not propose any alterations in those provisions; (3) the bill confers no power to interfere with his property, and so far as the railway affects such property it is the result of past legislation which will not in any way be altered by the bill; (4) he has no such interest in the subject-matter of the bill as entitles him to be heard according to practice.

Mr. Carter (appearing in person): The Metropolitan railway are building this railway upon brick arches in front of my house, and passengers and others will be able to look into my windows, and although my land is not touched, a grievous injury will be inflicted upon my property, and its market value destroyed. The delay in building the railway quite misled me, as I had no idea of the direction it would take when I purchased my villa. Power has also been given to the promoters to enter into an agreement with the Great Western railway company, the effect of which will be that heavy luggage trains will be run along the line, making the vibration and damage to the adjoining houses much greater than if only passenger trains used it.

Sir Mordaunt Wells (for promoters): The petitioner bought his house after this line had been sanctioned, and the extension of time asked for by the bill (which is an extension of time for completing the works and not for taking the land) has nothing to do with the portion of line in respect of which Mr. Carter complains, which is already in process of construction.

Agents for Bill, *Sherwood & Co.*

MIRFIELD GAS BILL.

Petitions of (1) LOCAL BOARD FOR THE DISTRICT OF RAVENSTHORPE; (2) LOCAL BOARD FOR THE DISTRICT OF MIRFIELD.

28th April, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Gas Company—Local Sanitary Authority Opposing Gas Bill—General Locus of, Against—Representation of Consumers by—Gas Undertaking, Compulsory Purchase of, sought by Local Authority—Maximum Price of Gas—

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*Standard Price, Change to, with Sliding Scale—
Illuminating Power—Test Burners—Increased
Capital of Gas Company — Limitation of
Dividends—Extension of Gas Area — Reserve
Fund—Insurance Fund—S. O. 134 (District
Injuriouslly Affected)—Gasworks Clauses Act,
1847—Practice—Petitioners Making Proposals
Outside Bill—Court will not Limit Locus
Standi in respect of.*

A gas company proposed to extend its area of supply, increase its capital, substitute for the present maximum rate a sliding scale of prices, and in several other respects change the conditions of supply. Opposing petitions were presented by two local boards within the company's area, alleging that consumers would be prejudiced by the creation of excessive capital, by high dividends secured to the company upon this new capital, by the substitution of a sliding scale for a fixed price, by a change in the illuminating power, by the extension of the company's district, and by other provisions of the bill. The petitioners also urged the transfer to them, by compulsory purchase, of such parts of the company's undertaking as lay in their respective districts. The promoters conceded the *locus standi* of the petitioners as to price and some other details, but contended that they could not be heard generally, or to propose a compulsory sale of the gas undertaking:

Held, that as the petition put in issue the operation of the bill generally upon the constituents of the petitioners, their *locus standi* could not be limited; and with regard to the question of purchase, that the Court could only decide that petitioners should be heard against the whole or against certain parts of a bill, but could not preclude them from proposing to the Committee, by way of argument against the bill, an alternative not proposed by the bill.

The bill proposed to extend the company's limits of supply to the district of Robert Town; to authorise the raising of additional capital; to limit the dividends on the original capital to ten, and on the new capital to seven per cent.; to borrow money on mortgage in respect of the

original and new capital; to fix the illuminating power at 14 candles; to adopt a sliding scale of prices for gas, varying according to the rate of dividend; and to construct new works for the manufacture or supply of gas or other residual products. There were also powers to manufacture and supply electric or other artificial light, but these were struck out of the bill.

The *locus standi* of the local board for the district of Ravensthorpe was objected to, because (1) the petitioners do not allege that any lands of theirs will, or can, be taken under the bill, or that they are owners, lessees, or occupiers of any dwelling-house situate within 300 yards of the limits within which any gasworks, or works for the manufacture or conversion of residual products or other works may be constructed under the bill; (2) the petitioners describe themselves as the local authority and urban sanitary authority of the district of Ravensthorpe, which forms part of the township and parish of Mirfield, and is consequently within the company's limit of supply; but they do not allege or show that they are themselves supplied with gas or other light by the company, or that they, in fact, consume any gas or other light, neither do they claim to represent the body of consumers or any single consumer of gas or other light; (3) the petitioners do not allege that any authority, right, or power possessed by them will be interfered with or taken away by the bill, and the mere desire on their part to possess, exercise, or acquire any additional rights affords no sufficient ground for a *locus standi* according to practice; (4) as regards any powers conferred by the Mirfield Gas Act, 1860, and now incorporated with the bill, the petitioners are in effect complaining of former legislation; and as regards the bill itself, they fail to show any injury done to themselves or to their property, right, or interest, entitling them to be heard according to practice; (5) their primary object is to compel the promoters to sell their undertaking, or portion thereof, to the petitioners; but they can have no *locus standi* to contend for the insertion of any such provisions, which are wholly outside and foreign to the subject-matter of the bill; (6) they have no such interests in the objects or provisions of the bill as according to practice entitles them to be heard.

Objections substantially the same were urged to the *locus standi* of the local board for the district of Mirfield.

Shiress Will (for local board of Ravensthorpe): Our district is within the promoters' area of supply, and we object to the extension of the company's limits, as such extension will enable them to postpone indefinitely their obligations to reduce the price of gas. On the

same ground we object to the proposed new capital and borrowing powers, which are far in excess of the real requirements of the company within any reasonable period of time within their present limits. The new capital and borrowing powers have been estimated with reference to the supply of electric light, and as these powers are to be abandoned the money powers should show a corresponding reduction. The maximum rates of dividend proposed are too high, having regard to the following circumstances:—By their Act of 1860, the company were authorised to raise a capital of £85,000, and borrow on mortgage £8,000. Instead, however, of borrowing this sum, they raised it by creating additional shares which thus became entitled to ten per cent. dividends. Such a proceeding, though perhaps within the strict legal powers of the company, was certainly not contemplated by Parliament; and as the consumers have had to bear this additional burden, there ought to be some reduction in the amount of profits which the company are authorised to divide upon their new capital. We also object to the standard price to be charged and to the sliding scale, which, if conceded, will, we fear, be worked greatly to the prejudice of the consumers. Considering the advantages which the company enjoy in their nearness to collieries, the price they charge should be lower, and the illuminating power higher, than that contemplated by the bill. We also object to the proposed insurance fund and to a reserve fund differing from that authorised by the Gasworks Clauses Act, 1847. In their notice of objections the promoters say that we do not state that we are consumers of gas. That is not necessary, because, under the Public Health Act, it is the duty of the local authority to light their streets: that they are lighted is a fact that cannot be disputed, and we pay the company many hundreds a year for public lights. With regard to price, the existing Act provides for 5s., and the same price is fixed in the bill, but it will be disturbed in this way:—Instead of a maximum of 5s., the company propose to fix 5s. as the standard, provided that (clause 39) they may “increase or diminish such standard price subject to a decrease or increase in the standard rates of dividend upon the ordinary capital, as defined by this Act, to be calculated as follows: for every penny charged in excess or in diminution of such standard price in any year, the standard rates of dividend upon the ordinary capital shall, for such year, be reduced or increased by 5s. in £100 per annum.”

Mr. RICKARDS: So that if they like to submit to a decrease of dividend they may raise the price above the 5s.?

Will: Yes.

Pembroke Stephens (for promoters): That 5s. has been altered to 4s.

Will: This is the first time I have heard of it. We say we are entitled to a general *locus standi* under S. O. 134.

Mr. RICKARDS: The promoters do not object to your *locus standi* as to certain points.

Will: If I am to go into detail, there is scarcely any part of the bill that we must not necessarily be heard against.

Mr. RICKARDS: Your petition relates to Ravensthorpe, and you would be limited to Ravensthorpe.

Stephens: At 2 Clifford & Stephens, p. 261, the Court say:—“In exercising the discretion given them of admitting a municipal authority or inhabitants, the Court must take some cognisance of the amount of probable inconvenience the petitioners will suffer under the bill, otherwise it might be infinitesimal.”

Will: I can satisfy the Court that my grievance is worth considering. Under the old Act the illuminating power is fixed at 11 candles; under this bill it is proposed to be increased by 3 candles, but though that is an apparent improvement it is not really a difference of 3 candles, because the company propose to alter the test-burner, and according to the burner you may make a difference of 2 candles in the same gas.

The CHAIRMAN: Perhaps it will save time if we call upon Mr. Stephens to point out how, in his view, the *locus standi* of the local boards ought to be restricted. *Prima facie* we think they are entitled to the *locus standi* which they seek.

Stephens: As regards some of the points raised in the petition, I concede that the petitioners have a *locus standi*. As regards some of the other points, I do not think that they have, consistently with practice, a right to be heard at all. One of the allegations is “that it would be expedient that powers should be given in the bill to enable the Ravensthorpe local board to purchase so much of the gas undertaking as is within their district.” In the *Farnworth and Kearsley Gas Bill* (2 Clifford & Rickards, p. 91), where a gas company promoted a bill for purchase of land, and construction of additional works and the raising of new capital for the purposes of the undertaking, the preamble of the bill was opposed by the local board, who contended that they had a right to be heard against the raising of new capital, and asked for the insertion of provisions empowering them to buy the company's undertaking. The local board were precluded from going into that question, as there was nothing in the bill as to

the purchase. As regards questions dealing with the legitimate working of a gas company, I am prepared to concede the *locus standi*, but I decline to give the petitioners facilities for asking for the insertion of provisions for the purchase of our works.

Mr. RICKARDS: However we might limit them, it would still be open to them to propose anything to the Committee. All we can say is that they may be heard against the whole or against part of that which is contained in the bill. We cannot help their proposing something outside the bill.

Stephens: I think you are underrating the powers of the Court in that respect. In tramway cases over and over again where railway companies have appeared as frontagers, and where they have also sought to raise the question of competition, you have said, "We will let you appear as frontagers, but we will expressly exclude you as regards competition."

Mr. RICKARDS: What we have done in those cases has been to give a *locus standi* under S. O. 135, which, by its terms, limits the opposition to a frontagers' opposition and excludes everything else.

Stephens: With regard to the powers to light by electricity which are contained in the bill, all those powers will be struck out; and we have no objection to the *locus standi* of the petitioners to see that those powers are struck out. When those clauses are gone, we are in the ordinary position of a gas company seeking powers with regard to additional land, additional works, and additional capital. As regards illuminating power, we give three candles more, so that the petitioners cannot possibly have anything to say upon that. As regards price, the maximum of 5s. is to be reduced to a standard price of 4s. If it is to be supposed that that might have the effect of increasing the price—though it could not possibly do so—let the petitioners be heard upon the question of price, but their *locus standi* should be limited to the striking out of the electric lighting powers and the question of price, and they are not entitled to go into the question of purchasing the undertaking. The *locus standi* of local authorities was limited in the *Wigan Improvement Bill* (1 Clifford & Rickards, 125), and in some of the Glasgow cases the *locus standi* of the corporation of Glasgow has been limited to particular points. In the *Halifax Water and Gas Extension Bill* (1 Clifford & Rickards, 226) there was a limitation of the *locus standi* of the local board.

Mr. RICKARDS: That was an omnibus bill. We should not in such a case give petitioners a *locus standi* against the whole bill. This case is quite different. This is a case of the local

board of the district standing up for the district against a proposal of the company, alleging that the powers proposed to be given to the company would operate injuriously to the whole district. It is not a question of a single clause of the bill: it is a question of the operation of the whole bill as regards the constituents of the petitioners. The circumstances of the cases you have quoted are not at all like those here.

Stephens: All I say is that in other cases the Court has not felt itself precluded from limiting the *locus standi* over and over again. Local boards have been shut out from appearing against gas bills, except as regards matters affecting them. We are not coming for the first time to get powers in this district. We have been lighting the district for 19 years, and these two boards have no more right than the other boards that do not petition to come and raise general questions against us.

Ledgard (for the Mirfield local board) stated that his petition raised the same questions as those raised by Ravensthorpe.

The CHAIRMAN: We think in both cases the *locus standi* must be *Allowed generally*.

Agents for Ravensthorpe and Mirfield Local Boards, *Sherwood & Co.*

Agents for Bill, *Walker & Co.*

NORWICH TRAMWAYS BILL.

Petition of the GREAT EASTERN RAILWAY COMPANY.

21st April, 1879.—(Before Mr. BRISTOWE, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH, and Mr. RICKARDS.)

Tramways—Railway Company as Frontagers—Interference with Station Approaches—Bridges—Obstruction to Traffic—Private Road—How far a part of Railway Premises—S. O. 135 (Frontagers on Tramway Lines)—Locus Standi under, how Limited.

A railway company opposed a tramway scheme on the ground that it would interfere with the approaches to their station, more particularly by obstructing a bridge in proximity to their premises. They claimed to be heard as frontagers under S. O. 135. It was objected that, inasmuch as their premises did not abut on the road to be traversed by the proposed tramways, they had

no right as frontagers. Evidence as to the *locus in quo* having been adduced, it was shown that their station stood at some distance back from the proposed line of tramways, but that it was connected therewith by a private road :

Held, that this road formed part of the company's premises, and that, under these circumstances, the petitioners were entitled to a *locus standi* within the meaning of S. O. 135.

The *locus standi* of the petitioners was objected to, because (1) they do not allege that they are the owners or occupiers of any house, shop, or warehouse in any street to be traversed by the proposed tramway, or that they will be injuriously affected in the enjoyment of their premises or the conduct of their business; (2) they are not, as stated in their petition, frontagers upon any of the roads mentioned; (3) they are not entitled to be heard according to practice on the ground of competition; (4) they do not allege that they have, nor have they, the control of the Foundry-bridge or any of the roads referred to in the petition, or any such rights or interests in them as to entitle them to be heard; (5) their petition discloses no ground for a hearing according to practice.

Pember, Q.C. (for petitioners): Our petition alleges that we are owners of property and frontagers upon certain roads proposed to be traversed by the tramways, as well as of roads and communications diverging from the said roads, and we object to the powers proposed by the bill as injurious to our rights and interests. We also allege competition, but on that point we do not insist. The proposed tramways are intended to cross with a double line of rails the Foundry-bridge, which forms the principal approach to our Norwich Thorpe station. We allege that this bridge is already very narrow and insufficient to carry existing traffic, and we say that the proposed tramways will block up the approach road to our station, and obstruct the traffic passing to and from it. A bill is now being promoted before this House enabling the corporation to widen this bridge and empowering us to contribute towards this object. The present bridge is unfit to carry even a single line of rails, and before any tramway is allowed, we claim to be heard to prevent the obstruction of traffic and interference with the approach to our station. With regard to the bridge, although our station does not actually front upon it, our approach road runs at right

angles into the road along which the tramway will be laid, just at the north end of the bridge; and we have a more special interest in the bridge than anyone else, as is shown by the fact that we have agreed to share in the expense of widening it, a liability which ought to be imposed upon the tramway company also. We are, in fact, frontagers to the extent of the width of our approach road, which abuts on the road along which the tramways will be laid.

Mr. Rickards: Is the approach road the property of the company?

Pember: Yes; it is a private road connecting at a short distance the station and the road upon which the tramways are to be laid; in fact, this approach road is a part of the station. I cite in support of my arguments the cases of the *North Metropolitan Tramways* (2 Clifford & Stephens, 89); *Dublin Tramways* (Ib., 148); *King's Cross and City Tramways* (2 Clifford & Rickards, 106). The last case shows that, as frontagers, we are not confined to objecting to obstructions to traffic in front of our own premises only.

A. G. Rickards (for promoters): With regard to the first case cited, the *North Metropolitan*, inasmuch as the railway company there were the owners of a public-house as well as of the railway, it may be assumed that they were allowed a *locus standi* as frontagers upon that ground. As to the *Dublin Tramways* case, the Great Eastern are not frontagers according to the definition of frontagers in the head note of that case. There the railway company had stations approached by private roads at distances of one-third and one-sixth of a mile respectively from the road traversed by the tramway, and their *locus standi* as frontagers was disallowed. With regard to the *King's Cross and City Tramways* case, though a frontager whose premises abutted on the line of tramway might be allowed to object to the obstruction caused by the tramway, not only in front of his own premises, but at some distance off, that is a very different thing to the case of a railway company whose station is separated by a distance of over one hundred yards as in this case from the road traversed by the tramway. A frontager is a man who has property abutting upon a street traversed by a tramway.

The *CHAIRMAN*: The Great Eastern here has property abutting upon the street traversed by the tramway, because this private road is their property.

A. G. Rickards: But they have no premises abutting upon the tramway. If you were to hold that they are frontagers because they have a private road running down on to the line of tramway, it would make no difference how far

back the premises were from the road. If they had got a booking office or a parcels' receiving office abutting upon the line of tramway, we should be prepared to concede them a *locus standi* on that point; but a private road is not premises.

The CHAIRMAN: The question turns upon whether the petitioners are frontagers within the meaning of S. O. 185.

A. G. Rickards: First, we say we do not admit that they are frontagers; and, secondly, admitting that they are frontagers, we say that it is a question of degree; and we are prepared to call evidence to show that the distance from the proposed line of tramway to the nearest point of their station is over one hundred yards.

Mr. Emanuel, C.E. (called and examined): From the nearest point of the Foundry-bridge to the nearest point of the Great Eastern buildings is 120 yards; to the nearest point of the line of tramway it would be 110 yards. [The witness produced a map of the premises in question.]

The CHAIRMAN: We have looked at the map, and we are quite satisfied that the *locus in quo* is part of the company's premises.

A. G. Rickards: I ask you to limit their *locus standi* to objecting to our interference with the Foundry-bridge; or, at any rate, to their rights as frontagers, and not to extend it to the question of competition, or to the question of the general merits of the proposed scheme.

Pember: We do not rely upon competition. The petitioners are entitled to such a *locus standi* as is given under S. O. 185.

The CHAIRMAN: The decision will be that the Great Eastern are entitled to such a *locus standi* as is given under S. O. 185.

Agents for Bill, Sherwood & Co.

Agent for Petitioners, C. A. Curwood.

PEMBERTON LOCAL BOARD BILL.

Petition of the RIGHT HONOURABLE ROBERT TOLVER, BARON GERARD.

18th March, 1879.—(Before Mr. RAIKES, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Water Bill—Local Board—Landowner—Lord of the Manor—Interference with Water—Underground and Surface Water—Disused Quarry

as Artificial Reservoir—Petitioner Part Owner of—Waterworks Clauses Acts, 1847 & 1863—Public Health Act, 1875.

A local board, which supplied their own district with water, brought in a bill which, besides extending the time for the construction of reservoirs and other works in connection with their undertaking, conferred upon them additional powers of taking, for their own use, water which had accumulated in a disused quarry. The quarry abutted on the estate of the petitioner, who was lord of the manor. The promoters did not propose to come on his land to abstract the water but to do so by means of a syphon inserted in the further end of the quarry through the land of a neighbouring landowner. The petitioner claimed to be part owner of this water, which, it was argued, was not natural underground water, but water purposely allowed to accumulate in the quarry, which formed an artificial reservoir for storage purposes. From this, a surface stream overflowed, and, with the stored water, was used for the general purposes of the estate. It was pointed out that the bill empowered the promoters to appropriate the whole of this water, and that if the bill was passed the petitioner would be subjected to legal penalties if he in any way interfered with this source of supply to the local board:

Held, that he had such rights over the water in question as to entitle him to be heard against interference with it by the promoters.

The *locus standi* of the petitioner was objected to, because (1) no lands, water, or property of his will be taken or interfered with under the powers of the bill, nor any of his rights, powers, or privileges prejudicially affected thereby; (2) it is not true, as alleged, that any portions of the waste of the manor of Billinge will be compulsorily taken; (3) it is proposed by the bill to take underground water from the disused Bispham quarry by means of a pipe or syphon inserted in the Smethurst shaft of that disused quarry, but the said shaft is not, nor will any part of the intended pipe or syphon be situate in or upon lands of the petitioner, and the water proposed to be taken from such disused quarry

does not belong to the petitioner, nor has he any legal right to restrain the owner of the land on which the Smethurst shaft is situate from abstracting such water, or from transferring that right to the promoters; (4) the petition discloses no ground for a hearing according to practice; (5) it is not true, as alleged, that the petitioner is part owner of the disused Bispham quarry; (6) the petitioner does not allege, nor is it the fact, that he will be prejudiced by the proposed postponement of the construction of works authorised by the Act of 1875.

Aspinall, Q.C. (for petitioner): The bill extends the time for the construction of two reservoirs authorised by an Act of 1875. The local board have taken the land for these reservoirs, and also way-leaves for the purpose of conduits and roads. Although Lord Gerard's land does not surround these reservoirs, one of them abuts on his property.

Mr. RICKARDS: Is there an extension of time asked for with regard to anything except the reservoirs?

Aspinall: No; but the time of the laying down of the pipes will be extended if the time for the construction of the reservoirs is extended, and the powers of the Act of 1875 will be kept hanging over Lord Gerard, and the value of his property prejudiced. The petitioner also claims to be heard as the owner of waters proposed to be taken compulsorily. Clause 7 provides that the promoters may take and impound the waters from the disused Bispham quarry, and all waters on or under any lands for the time being belonging to the local board, &c.; and clause 8 authorises the construction of a conduit, watercourse, or line of pipes, commencing in the Smethurst shaft of the disused Bispham quarry. We object in our petition to the appropriation of these waters. The Bispham quarry consists of a perpendicular shaft with lateral openings, and forms a most valuable reservoir, the overflow from which furnishes in the driest season an unfailing supply of water, which runs in a stream through our land, and is available for the general purposes of the estate. The bill confers additional powers on the local board for appropriating this water without giving us any compensation. The quarry, which is now a large reservoir, is partly under a neighbour's land, and partly under Lord Gerard's. This reservoir of water is partly supplied by surface-water coming over Lord Gerard's land, although there may be springs in addition.

Milward, Q.C. (for promoters): We shall not touch the surface-water in any sense. There is a proviso to Clause 7, which says "that nothing in this Act authorises the local board to take

water from any river or brook, or any other water running in a defined course."

Aspinall: The water now runs from the quarry in a defined course, but if they take it from the quarry it will cease to do so. This water has accumulated artificially in an underground reservoir, but it is not underground water in the ordinary or legal sense of the term.

Mr. RICKARDS: It is water collected in a sort of artificial tank?

Aspinall: And that water is to be abstracted by the local board through a syphon situated on a neighbouring owner's land, but which will have the effect none the less of abstracting the petitioner's water. The petitioner would be subjected to severe penalties, under the Waterworks Clauses Act, which is incorporated with the bill, if he were to abstract any of the water out of this reservoir when once the local board had acquired the right of taking it through the shaft on his neighbour's land. The promoters also propose to take a piece of waste land belonging to Lord Gerard as lord of the manor.

Milward, Q.C. (in reply): We do not propose to go on Lord Gerard's land at all, and we have no power to do so. Our own land runs up to roads leading to the reservoir in question. We are not extending the time for laying the pipes. We do not take the water from Lord Gerard's land, but from the Smethurst shaft, the land over which does not belong to him.

Aspinall: But you have express power to take the whole of the water of the quarry.

Milward: This is not at any rate natural underground water to which nobody has a natural right.

Mr. BONHAM-CARTER: But it is underground water collected in a sort of artificial tank. How would it be if Lord Gerard pumped from his end, and took away your water?

Aspinall: He would be subjected to legal penalties if this bill were passed.

Milward: We are asking to do no more than Lord Gerard's neighbour could do at any moment for the purpose of quarrying.

The CHAIRMAN: We think that the *locus standi* of Lord Gerard must be *Allowed*.

Agents for Bill, *Sharpe, Parkers, Pritchard & Sharpe*.

Agents for Petitioner, *Dyson & Co.*

PINNER RAILWAY BILL.

Petition of the LONDON AND NORTH-EASTERN RAILWAY COMPANY.

19th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Through and Local—Competition—Running Powers to same places.

The bill was one for the construction of a small railway by an independent company in continuation of another short line, which would, with it and a Metropolitan railway, form a through route between the suburb of Pinner and the City of London. The London and North-Western railway company claimed a *locus standi* on the ground of competition, as they already ran from Pinner, partly over their own system and partly over a Metropolitan line to the City. They contended that the proposed railway, although nominally in independent hands, was intended to serve London, and not merely local traffic, as was shown by the fact that the promoters took power to enter into working and other agreements with companies running to London. The petitioners cited the case of the *London, Brighton and South Coast Railway (Croydon, &c.) Bill* (2 Clifford & Rickards, 121), where the case of the petitioners was the converse of their own, in support of their claim to a *locus standi*:

Held, that the competition created by the bill was of such character as to entitle the petitioners to be heard.

The *locus standi* of the petitioners was objected to, because (1) as to competition, the proposed railway will accommodate a district which is at present without a railway, and cannot divert any traffic to which the petitioners are legitimately entitled; (2) the proposed railway will not communicate with the railway of the petitioners, or cross over or under it, and there are no provisions for taking or using any lands, stations, &c., of the petitioners; (3 and 4) the power contained in clause 43 of the bill for making, working, and other agreements, with other companies, is merely a permissive one, and does not, nor does any other provision of the bill,

affect the petitioners so as to entitle them to be heard according to practice.

Pope, Q.C. (for petitioners): This is a case of competition, and the converse of that of the *London, Brighton and South Coast Railway (Croydon, Oxted, and East Grinstead Railway) Bill* (2 Clifford and Rickards 121). Here we are the large through line, and the Pinner extension is the small local line. The Kingsbury and Harrow line, in conjunction with the Metropolitan and St. John's-wood railway, now in course of construction, and the Metropolitan railway, will, when made, form a through route between Harrow and the City. Now, what it is proposed to do is to extend the Kingsbury and Harrow line to Pinner, which, like Harrow, is also a station of the London and North-Western, and so constitute a competitive route between Pinner and the City, the London and North-Western already running trains between these points. That this, and not merely a short local line, is contemplated by the promoters, is evident from the fact that by the bill powers are taken to agree with the Metropolitan, the Metropolitan District, and the Great Western railway companies. Although this line is promoted by a nominally independent company, it is evident that such a short line cannot be constructed and worked really as an independent undertaking.

Batten (for promoters): A question of competition is necessarily one of degree, and the competition must be of sufficient magnitude. The nearer you get to London the more the distance at which fair competition may be said to exist diminishes. The competition here already exists, and this is at most a development of it. The proposed line does not approach the London and North-Western line, and its object is to serve a new district, which will not exist until numerous villas have been built.

Mr. RICKARDS: What would be the relative distances from Pinner by the London and North-Western railway to the City, and by the proposed line and the Kingsbury and Harrow line?

Pope: About the same.

Batten: We shall not accommodate the same traffic or run to the same terminus. We shall convey passengers to the west end. (*Metropolitan and St. John's Wood Railway Bill*, 2 Clifford & Stephens, 19.)

Mr. BRISTOWE: The London and North-Western also run trains to the west end over the district line.

The CHAIRMAN: The *locus standi* of the London and North-Western Railway Company is *Allowed*.

Agent for Bill, *W. Toogood*.

Agent for Petitioners, *Roberts*.

PRESTON GAS BILL.

Petition of (1) WALTON-LE-DALE LOCAL BOARD.

7th May, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Gas Company's Bill—Local Board Petitioning Against—Local Board District Within Gas Area—Testing Place Asked for in Local Board District—Price of Gas, no Statutory Limit to—Extension of Gas Area—Increased Interference with Streets, Owing to—Increase of Capital—Expenditure, Alleged Unproductive, by Gas Company—Gas Works Clauses Act, 1871—Past Legislation, Complaint of.

A gas company promoted a bill, *inter alia*, to extend their limits and to raise further capital. The bill was opposed by a local board whose district was within the company's area of supply, and who complained that their district would still be subject to exceptional rates, there being in the existing Gas Act of the company no maximum price within this district, though such a maximum was prescribed in other parts of the gas area. The petitioners also complained that by the proposed increase of capital their position as consumers would be prejudiced owing to the effect of comparatively unproductive outlay upon the company's dividends; and they also desired to be heard in order to procure a testing-place for gas in their district, and against the increased interference with the streets within their jurisdiction, which would follow from the extension of the company's limits to a district beyond that of the petitioners. The promoters objected that the bill proposed no change in the price of gas, and contained no provisions affecting the petitioners, who were really complaining of past legislation:

Held, that the local board had no *locus standi*.

The *locus standi* of the Walton-le-Dale local board was objected to, because (1) there is nothing in the bill, or the powers thereby sought, that in any way alters the present position of the petitioners as regards the company, and the bill in nowise affects the present powers of the

company as to breaking up, or interfering with, the streets, or maintaining, enlarging, or discontinuing the gas works of the company within the district of the petitioners, or as to the price of gas within the Walton-le-Dale district; nor is there anything in the bill to justify the petitioners in asking that a testing place should be provided in their district, the bill involving no such question or matter; (2) the petitioners do not allege any ground of objection which, according to practice, entitles them to be heard.

Dugdale (for the Walton-le-Dale local board): By the Preston Gas Act, 1865, Walton-le-Dale was included within the limits of the Preston gas company. Since the passing of that Act it has been constituted a district for local government purposes; and we are now under the Public Health Act, 1875, the sanitary authority of the district having control of the streets. Powers are sought by the bill to extend the company's limits of supply so as to include, amongst other places, the township of Brindle, between which and the borough of Preston our district intervenes. It is proposed that the intended Act should be read as one with the Company's Act of 1865, and the bill will thus confer power upon the company to break up and interfere with the streets within our district for the purpose of supplying gas in Brindle and other places. Powers are also sought by the bill for the company (amongst other things) to maintain, enlarge, and discontinue their gas works upon certain lands defined in the schedule to the bill, and amongst them certain lands within our district, under the Act of 1865, passed before we were in existence as a local board. There is no limit to the price which the company may charge for the supply of gas within our district, although a limit was imposed upon the charge to be made within the borough of Preston and the township of Fulwood, which was, in 1868, represented by a local board who petitioned against the bill. Having regard to the position and requirements of our district, we say there exists no sufficient reason why the price of gas there should be higher than in Preston and Fulwood. The gas company charge us a higher price for gas than they do in either of those places, though our district is only separated from Preston by the River Ribble, and is practically, for a considerable distance, a continuation of that town, and our population and consumption of gas are much larger than in Fulwood. We allege that the incorporation of the Gasworks Clauses Act, 1871, will fail to give us the protection which it is the intention of that Act to secure to the local authority of a district.

Mr. RICKARDS: Does not the Act of 1865

impose a limit of price over the company's district of supply?

Dugdale: Not over the whole of it; over part of the area of supply there is a maximum price, but in another part there is no limit at all. In our district the company may charge what they like. Our contention is that every shilling of additional capital raised by the company under this bill may, and probably would, be paid for by the charge to us of a higher price for gas. We are not complaining of past legislation, but we say that there is something in the bill which will aggravate the injury we have already suffered.

The CHAIRMAN: The company can charge you as much as they like at present?

Dugdale: But they have only a certain amount of capital, and they have only to find enough to pay the dividends upon that capital; but by increasing their capital and expending it, as we say they may do, and most likely will do, unproductively, they will have an inducement to charge us more than we are now charged in order to make up their dividends on that increased capital.

Michael, Q.C. (for promoters): The restriction in the Act of 1847 as to the amount of dividend that can be paid applies.

Dugdale: I do not say the company can pay more dividends than they are limited to by the Act, but if they raise fresh capital the capital must earn dividend, and they may be tempted to charge us exorbitantly, in order to make up their deficiencies in other districts. (*Sunderland and South Shields Gas Bill*, referred to in Clifford & Stephens' *Practice*, p. 93.) With regard to the testing, that is a matter which enters into the question of price. The company have not by the bill prescribed any testing place at which the gas supplied to us can be tested. They now supply it to us from two gas-holders, unconnected with any testing station, and can turn gas of an inferior quality into the gas-holder which supply us without our being able to check it, so that not only is it in the power of the company to charge us more than others for our gas, but to give us all the bad gas which they cannot consume elsewhere.

Michael (in reply): This is an attempt by getting a *locus standi* to repeal or alter existing legislation. The Walton-le-Dale local board are not in any way affected by the provisions of the bill. In the first place there is no obligation on the local board to take our gas, or on the company to supply gas, either for public or private lights. It is not like the case of water, and the decisions with respect to water bills cannot be applied to gas bills. With regard to the apprehension that the raising of fresh capital

may injure the Walton-le-Dale local board, that fresh capital is to be raised under the auction clauses, so that the company cannot derive any benefit from the raising of fresh capital. With regard to this district having been left unprotected when the former Act was passed there is no particular virtue in a local board, and as to the inhabitants of the district they will in point of fact be benefited by this bill, because by the incorporation of the general Act of 1871, for the first time an obligation is put upon the company to supply gas on the demand of the consumers, both public and private. Except in that respect we do not alter existing legislation in the slightest degree. With regard to the testing, the whole of our gas is to be tested before it is supplied, and we have not altered that obligation in any way.

Mr. RICKARDS: The petitioners allege that you propose to interfere with the streets?

Michael: We do not take any new powers as to that which we had not before. We have already powers to interfere with the streets in Walton-le-Dale.

The CHAIRMAN: We think that the Walton-le-Dale Local Board has no *locus standi*.

Locus standi Disallowed.

Agent for Petitioners, Cripps.

Petition of (2) CORPORATION OF PRESTON.

Street, Stopping-up of, by Gas Company—Rights of Way, Cesser of—Compensation for, to Municipal Corporation—Road, Rights in Solum of—Owner of Land on Both Sides of Road—Street Authority Claiming Soil of—Easement Possessed by Street Authority in—Road, Metalling and Surface of, Vested in Road Authority—Land, Notice of Compulsory Purchase—New Capital—Gasworks, Enlargement of.

The corporation of Preston petitioned against a gas bill, on the ground that the promoting company proposed to stop up a street in the borough, and took powers for the cesser of the right of way, and for compensating the petitioners for any injury sustained by them as the street authority. The promoters conceded to the corporation a limited *locus standi* in respect of this provision in the bill, but the petitioners claimed as landowners to be heard generally:

Held, that the right of the corporation to appear was limited to the clause which provided for the stopping-up of the street, and that, upon allegations directed against a proposed increase of new capital, an extension of the gas limits, and a provision respecting the land applicable for gasworks, the petitioners could not be heard, their status not being affected by the bill.

The *locus standi* of the mayor, aldermen, and burgesses of the borough of Preston was objected to, because (1 and 2) with regard to clause 3 of the bill, the petitioners object to the proposed variation of the general Act, viz., the Gasworks Clauses Act, 1871, but they are not entitled to do so, inasmuch as the proviso to clause 2 of the bill instead of injuring, is for the protection of the petitioners, and keeps in force the special provisions which were inserted in the Act of 1865 for their protection; (3) the petitioners allege that the proposed extension of the present authorised limits of supply by the gas company is objectionable, but the corporation have no right to object to such extension, inasmuch as it in no wise affects the present powers or position of the corporation or the liabilities to which the company are now subject as regards the corporation; (4) the petitioners allege that the public streets are vested in them, and that the borough and the inhabitants thereof will be injuriously affected by the bill; but except as to the stopping-up of Appleton-row, the bill takes no new powers over, and will in no way affect the streets of the borough or the inhabitants thereof; and as to the stopping-up of Appleton-row the company are, as adjacent landowners, the owners of the soil, and the corporation can only oppose the bill as regards the powers sought for as to the road, so far as the discontinuance of the road as a public highway, and so far as the extension of the company's gas works thereon is involved, and to this limited extent the right of the corporation to be heard against the bill is conceded; (5) with respect to the objections raised by the corporation to the proposed increase of capital and corresponding borrowing powers, the corporation are not entitled to be heard, inasmuch as the powers in question in nowise alter or affect the provisions now in force for the benefit of the corporation and the consumers with respect to the company and their existing capital powers; (6 and 7) as to clauses 23, 24 and 25 of the bill (supply of light by electricity), the promoters do not deny that the corporation are entitled to be heard, but with this

exception, and clause 6, they have no good or substantial ground of opposition according to practice.

O'Hara (for corporation of Preston): In the first place we claim a landowner's *locus standi*. The bill (clause 6) provides that the company may stop up and appropriate to the purposes of their undertaking, the street or road in Preston, known as Appleton-row, and after it is so stopped-up all rights of way are to cease, "and the site and soil thereof shall vest in the company on payment to the corporation of Preston of such a sum of money and upon such terms and conditions as may be agreed upon, or as in case of difference shall be settled and determined under the provisions of the Lands Clauses Consolidation Acts with respect to the settlement of disputed cases of compensation." With respect to that, our allegation is, "we object to this stopping-up of Appleton-row and to its compulsory purchase, this being a public street under our control as the urban sanitary authority." It is true that the gas company own the property on each side of the street, but the promoters in fact admit that we are landowners, having sent us a notice as landowners, and also by the very terms of clause 6, viz., "that the soil and site thereof shall vest in the company," implying that we have the soil.

Michael (for promoters): The Referees have held that where a landowner has property on both sides of a street, the *solum* of the road vests for the purposes of *locus standi* in the landowner. By a recent decision* the Queen's Bench Division have held that the street authority has not only an easement over the road, but that so much of the soil, metalling, &c., as goes to constitute the road, is vested in them; the soil below that remaining in the landowner on each side of the street. Clause 6 was drawn before that decision was given, but I do not know that any other words than "site and soil thereof shall vest in the company" could have been used. The street authority is not a landowner in the ordinary sense; but it has a modified easement, and, according to the recent decision, other rights not incident to an ordinary easement.

Mr. RICKARDS: The question is whether, when power is taken in a bill to purchase land compulsorily, and notice is given to the party affected, it is competent to the promoters to turn round and say, "Though the words of our clause give us a power to take your land absolutely, the land is not yours; the notice was given under a mistake, and therefore you cannot be heard."

* *Coverdale v. Charlton*, L.R., 3 Q.B.D. 376. Affirmed on appeal, 4 Q.B.D. 104.

Michael: I do not say that it was given under a mistake; it was given out of abundant caution. The mere service of notice does not prove anything. In the *Castleford Gas Bill* (2 Clifford & Rickards, p. 78.) Mr. Wheeler, who was the owner of the *solum* in the street, was given a *locus standi*.

The CHAIRMAN: We think that the corporation are not entitled to a general *locus standi* as landowners in respect of this street, but only to the limited *locus standi* conceded by the promoters.

O'Hara: Then clause 21 provides that the company may, from time to time, "maintain, alter, improve, enlarge, extend, and renew or discontinue their existing gasworks, and otherwise carry their existing powers into execution upon the lands on which the gasworks are erected, or which are authorised to be used for that purpose, or any part of those lands, and which lands are described in the schedule to this Act." We allege that the company have already acquired, or have Parliamentary powers for acquiring, no less than 24 acres of land, of which they are entitled to use for manufacturing purposes no less than 12 acres, and the remainder for storage and the general purposes of their undertaking. The company have, however, only practically used 9 acres for such manufacturing purposes; and we object to powers for enlarging and extending their existing works as being wholly unnecessary. In the event of the company being able to make out a case for any extension of works, we ask that such extension should be confined to the lands upon which the manufacture of gas is now permitted, or that the company should be required to move those works to some place outside the borough, or otherwise that such extension of works should be refused.

Michael: Clause 21 is only inserted in compliance with a requirement of Lord Redesdale. Inasmuch as the Act of 1871 said that no gas should be made upon any land except the land scheduled to the Act, it was necessary technically to put in this clause, but we have the power to use these lands under a former Act; we do not take fresh powers to erect the gasworks in any new area.

O'Hara: The company's object is to get rid of the obligation under their former Act, which says that they shall not manufacture gas on any lands except those which belonged to the old company.

Mr. BRISTOWE: What is the operation of clause 21?

Michael: That the company may maintain, alter, improve, enlarge, extend, and renew their existing gasworks, subject to the provisions of the Act of 1865, upon those lands

scheduled; that is to say, they may manufacture gas upon 12 acres, and may not manufacture gas upon the other 12 acres.

The CHAIRMAN: I do not see that clause 21 gives power over any additional land.

Michael: No; we could be proceeded against in a court of law if we put up any manufacturing works except on land which we had power to take for that purpose under our former Act.

O'Hara: We object to their having powers for increasing their manufacture, and to their increasing their capital.

The CHAIRMAN: On what ground?

O'Hara: On the ground that by doing so for the purpose of supplying outside districts, which entails an enormous expenditure, they are postponing the day when, by the operation of the Gasworks Clauses Act, the price to consumers would be reduced.

The CHAIRMAN: We have decided that the mere fact of a gas company supplying an additional district is no sufficient ground for a local authority to oppose a bill.

[Without hearing *Michael* in reply.]

The CHAIRMAN stated that the Referees would restrict the *locus standi* of the Corporation to section 6, it being understood that the electricity clauses were to be struck out of the bill, and the question of additional nuisance not having been pressed.

Michael stated that that was provided for under the general law.

Agents for Petitioners, *Wyatt, Hoskins & Hooker*.

Agents for Bill, *Dyson & Co*.

RENFREW BURGH AND HARBOUR BILL.

Petition of (1) THE CALEDONIAN RAILWAY COMPANY.

21st March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Revesting in Promoters of Lands taken under former Act—Railway Companies—Agreement between, as to Lands subject of Bill—Easement—Rights of Petitioners under Agreement interfered with.

The bill contained provisions, *inter alia*, for re-vesting in the promoters certain lands which a railway company had acquired under a

former Act. With this company, the actual owners of the lands in question, the petitioning railway company had entered into an agreement for the use of the lands, and this agreement had been scheduled to, and confirmed by, an Act of Parliament. The petitioners complained that the bill, by revesting in the promoters these lands without specifying the use to which they were to be applied, ignored their rights and annulled their agreement. For the promoters it was pointed out that the lands in question were of no use to the petitioners, inasmuch as no works had ever been constructed, or might ever be constructed, upon them; that their interest in them was only a contingent one, and that at best they were in the position of an occupier of a house proposed to be taken, the owner of which was the other railway company, party to the agreement, whose *locus standi* was not objected to:

Held, however, that the petitioners were entitled to a *locus standi* against so much of the bill as related to the lands in question.

The *locus standi* of the Caledonian railway company was objected to, because (1) no lands or property of theirs are taken by the bill; (2) the agreement under which they claim to be heard has no validity, except as between the petitioners and the Glasgow and South-Western railway company, and cannot be pleaded against the promoters; (3) even as between the petitioners and the Glasgow and South-Western railway company the said agreement does not entitle the petitioners to insist on the construction, by that company, of any wharf or other works upon the lands referred to in the petition, nor can they object to the disposal of those lands; (4) the mere possibility of those lands (which have been in the possession of the Glasgow and South-Western railway company for more than 30 years) being applied to some purpose affecting the petitioners, does not entitle the petitioners to be heard against the bill; (5) the petitioners do not allege that they have incurred any expense on the faith of being allowed to use the said lands, and they are not entitled to be heard against the said lands revesting in the promoters; (6) nothing in the petition entitles the petitioners to be heard according to practice; (7) any interest which

the petitioners might claim in the said lands will be represented under the petition of the Glasgow and South-Western railway company.

Pember, Q.C. (for petitioners): The bill is primarily one to enable the corporation of Renfrew to borrow money on the security of the common good of Renfrew, but it affects us in the following manner. By the Glasgow and South-Western Railway Consolidation Act, 1855, that company obtained powers to construct and maintain, upon lands to be taken for that purpose, a new wharf, landing-place, quay, and tidal harbour. By an agreement entered into between ourselves and that company, and scheduled to and confirmed by another Act, the Glasgow and South-Western Railway (Additional Powers) Act, 1863, besides giving us running powers over a short junction railway constructed by them, the Glasgow and South-Western company agreed that we should have "the use of all ground, wharves, sidings, quays, harbours, and docks, cranes, stations, sheds, and other traffic accommodation which belong or might belong to, and be in connection with, the said railways, excepting the station and other accommodations at Paisley." The promoters, from whom these lands were originally acquired, now come for powers in this bill to re-vest these lands in themselves, without specifying what they intend to do with them, or recognising in any way our right to them as ratified by the above Act.

The CHAIRMAN: If the corporation get this Act, could they sell this land except subject to your right?

Pember: Yes; this would be a statutory right over-riding our agreement, unless our rights are reserved.

Vaughan Richards, Q.C. (for promoters): The whole claim of the Caledonian railway company is a derivative one based upon the agreement between themselves and the Glasgow and South-Western company, to whose *locus standi* we do not object. The petitioners have no more right to be heard than an occupier, whose house is taken for a railway, has a right to be heard as well as the owner. The petitioners have no right to insist upon any application of the lands which we seek to re-acquire. It is only when certain works have been made on them that the Caledonian company can claim to have the use of them.

The CHAIRMAN: It is more than that. The section gives the Caledonian company the use of all the ground. It is quite clear that the Glasgow and South-Western railway company cannot use it for any purpose but the purpose for which they acquired it, and they have acquired it subject to the rights of the Caledonian

company. A court of equity would restrain the Glasgow and South-Western company from using it for any other purpose except a railway. That being so, they would also be restrained from selling it.

Richards: They need not use it for any purpose, and until they do use it for railway purposes, the Caledonian company do not come in under the agreement. If you admit the *locus standi* of the petitioners after we have conceded that of the Glasgow and South-Western company, you will be practically admitting both landlord and tenant.

The CHAIRMAN: The *locus standi* of the Caledonian Railway Company is *Allowed* against Clauses 5 and 6, which deal with these lands, and so much of the preamble as relates thereto.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) OWNERS AND OCCUPIERS OF PROPERTY IN RENFREW, AND LIABLE IN PAYMENT OF RATES THEREIN. (A. C. CAMPBELL, ESQ., AND OTHERS.)

Scotch Corporation—Harbour Improvements—Power to Borrow Money on Security of Common Good—Owners, Occupiers and Burgesses—Misapplication of Common Good—Creditors of Corporation—Deterioration in Value of Security—Postponement of Petitioners to Bondholders—Simple Contract Creditors—Distinction between, and Petitioners—Common Seal, Representation of Petitioners by—Distinct Interests—Scotch and English Law as to Borough Property Distinguished—Burgh Harbours (Scotland) Act, 1853—Royal Burghs of Scotland Act (3 Geo. IV., cap. 91), 1822—Right of Appeal of Burgesses Under, Affected by Bill.

Under the bill, the corporation of Renfrew took powers to borrow a sum of money on the security of the common good of the burgh, in addition to that of harbour rates, for effecting harbour improvements authorised under former Acts. The petitioners were a body of owners and occupiers of property in, as well as burgesses of the burgh, and some of them were holders of promissory notes given to them by the corporation, as they alleged, on the security of the common good. The petition generally complained of the proposed application of funds raised on the security of the common

good to harbour purposes as contrary to existing legislation on the subject, and as affecting the value of the common good, in which they were interested either as owners and occupiers or burgesses; and those of them who subscribed the petition as creditors of the corporation alleged that their rights as such would be postponed by the provisions of the bill. They also claimed to oppose the bill as taking away a right of appeal to the Court of Exchequer, possessed by them as burgesses under an Act of 3 Geo. IV., c. 91, against a misapplication by the promoters of the revenues derived from the common good. Their *locus standi* was objected to principally on the ground that they were represented by the common seal of the promoters; and that they were only simple contract creditors who, as such, had no *locus standi* according to practice.

Held, however (taking into consideration the law of Scotland as to the application of burgh funds), that the petitioners, without distinction, were entitled to be heard generally on their petition, the Court expressing an opinion that the petitioning creditors were secured by the common good, and were for purposes of *locus standi* on a different footing to ordinary contract creditors.

The *locus standi* of owners and occupiers of property in Renfrew was objected to, because (1) no lands or property of the petitioners are to be taken; (2) the bill does not contain powers to execute any harbour works, nor are the petitioners entitled to be heard in respect of any power to that effect which the promoters may otherwise possess or obtain; (3) the petitioners are a small minority of the householders of the burgh of Renfrew, and are not entitled to be heard against the promoters, who, as the corporation, represent the whole body of householders; (4) none of the petitioners are entitled to be heard as creditors of the burgh, because (i.) creditors have no *locus standi* as such; (ii.) even if a preponderating body of creditors were entitled to be heard, the petitioners do not form such a body; (iii.) the petitioning creditors do not hold any security over the common good; (5) the petitioners are not entitled to be heard in respect of possible rates to be imposed under the Renfrew Police and Improvement Act, 1855,

because (i.) they constitute a minority only of those who would be liable to the rates, and they are represented by the promoters, who are the commissioners for executing that Act; (ii.) such of the petitioners as are owners would not be liable to the rates, and such as are occupiers do not constitute a sufficient representation of that class; (iii.) no such rates are imposed or provided for by the bill; (iv.) such rates may, by the Act, be levied irrespective of the amount of the common property, and the promoters are not bound to contribute anything in aid of those rates from the common good, except when the free income of the burgh enables them to do so, and then only in certain circumstances which have not arisen; (v.) it is admitted by the petition that the common good of the burgh yields a revenue of nearly £4,000 per annum, and that the burdens now affecting it are only about £31,000, so that even if the additional £20,000 proposed by the bill to be borrowed were to be totally unproductive, there would still remain nearly £2,000 per annum from the common good available in relief of the rates; (6) there are no facts or reasons stated in the petition which entitle the petitioners to be heard according to practice.

Shiress Will (for petitioners): The petitioners allege "that they are all either owners or occupiers of property within the burgh, and generally are burgesses of the burgh, and are liable to any assessment that may be imposed in consequence of the proposed measure, and they are interested in the preservation of the common good (i.e., property) of the burgh, and entitled to see that the same shall not be misapplied. They allege also that the properties belonging to such of them as are owners within the burgh will be seriously affected in value if the burdens contemplated be imposed, and they object to their properties being so reduced in value for a purpose which will not benefit them or the rest of the inhabitants. The petitioners, Andrew Crawford and Thomas Bissland Lang, are severally creditors of the burgh, on the security of the common good thereof to a considerable extent, and their securities will be impaired in value, and they object that this should arise, more especially from an unwarrantable application of the burgh revenues, which is at present illegal, other petitioners also being similarly situated." Such being the *status* of the petitioners, the bill provides that the corporation may borrow £20,000 on the security of the common good for the purpose of extending and improving the harbour. This is at present an illegal object to which to apply the revenues of the common good, which are applicable to municipal purposes only. It is true that the harbour rates are also

to be the security for the additional sum proposed to be raised, but as they are, and must be, quite inadequate, the result will be to burden the common good of the burgh for an illegal purpose, and the consequence to us must be additional taxation. Under the Burgh Harbours (Scotland) Act, 1853, when a burgh has adopted that Act, it is in a position, without coming to Parliament, to borrow on the security of the rates authorised by that Act, and that Act is in force in Renfrew. The bill is in direct opposition to the intention of that Act, as it authorises the promoters to borrow money for harbour purposes on the security of the common good. Then as to the creditors whose names appear in the petition, the corporation have borrowed large sums from these petitioners, and the proper form in order to make these loans a binding security upon the common good would have been to have taken a bond and assignation, and registered it in the register of sasines, when, according to the law of Scotland, it would have become a charge in priority upon the real estate of the corporation, i.e., the common good; but in this case the petitioning creditors accepted promissory notes, expecting to be re-paid in a short time. Those notes disclose that the money was borrowed on the security of the common good, so that it became a liability on the corporation; but they have never been converted into bonds, or registered, and it does not appear that it would be possible to register them now. The present bill contains a clause which provides that, "save in so far as otherwise expressly provided in such bonds and assignations, the same shall not have priority and preference according to the rules of registration thereof in the minute books of the corporation, or in the appropriate register of sasines, but shall rank, *pari passu*, according to the amount of the respective sums advanced and due under the same." That proviso has only reference to the bonds to be granted under this bill if passed and subsequently registered, and makes no provision for saving the rights of existing creditors, who will therefore be postponed unless they have duly registered their bonds in the proper register, the bonds of the petitioning creditors not being registered. Then we claim to be heard as burgesses, whose right of appeal to the Court of Exchequer against the corporation for misapplication of the common good is taken away by the bill. That right of appeal exists under a general Act of 3 Geo. IV, c. 91, entitled, "An Act for Regulating the Mode of Accounting for the Common Good and Revenues of the Royal Burghs of Scotland." Such an application of the fund as this bill proposes would be illegal under the terms of that Act if not authorised by the bill.

Mr. RICKARDS: Where English corporations come for powers which they would not have under the Public Act regulating corporations, we do not hold that ratepayers are entitled to appear against the common seal, notwithstanding that the corporation are asking for extraordinary powers.

Will: There is a considerable distinction between corporate property in England and the common good in Scotland, under the Act of 3 Geo. IV., cap. 91. The preamble of that Act recites "that it is expedient that regulations should be made concerning the sale, or letting of any part of the property of the said burghs, and the granting securities upon the same," which is the very case here. With regard to the objection that the petitioners do not sufficiently represent a class as creditors, an individual creditor, whose security was injured, would be entitled to a *locus standi*. In this case, it is proposed to give other creditors a priority to us. With regard to the objection generally, that we cannot be heard against the Common Seal, our interests are here at variance with those of the corporation. (*Bristol United Gas Bill*, 2 Clifford & Rickards, 2.)

Vaughan Richards, Q.C. (for promoters): The bill is not to execute works, but to borrow money to carry powers we already possess into execution. The petitioners cannot be heard as burgesses or ratepayers, as the common good is under the exclusive jurisdiction of the corporation, who represent the whole body of the burgesses and inhabitants of the burgh. They cannot either, by the rules of this Court, be heard as creditors, as they are simple contract creditors.

Mr. BRISTOWE: All the inferences to be drawn from the facts in this case go to show that the promissory notes are a charge upon the common good.

The CHAIRMAN: If that is the case it may be very material to consider whether it is not like the case of a mortgage on land, and of a bill being proposed which would give subsequent mortgagees priority over existing ones. There is an allegation in the last paragraph of the petition that the petitioners are creditors upon the security of the common good.

Mr. FORSYTH: We understand that according to Scotch law the bonds under this bill might be registered, and being registered they would take precedence of promissory notes; therefore the present creditors would be postponed to the creditors under this bill.

The CHAIRMAN: We Allow the *locus standi* upon this petition.

Richards: To the ratepayers as well as to the creditors?

The CHAIRMAN: Yes; we do not distinguish between them.

Agents for Petitioners, J. & J. Graham.

Petition of (3) CLYDE NAVIGATION TRUSTEES.

Abandonment of Harbour Scheme—Reresting of Land taken under former Act—Navigation Trustees—Repeal of Protective Clauses in favour of.

By the Glasgow and South-Western Railway Consolidation Act, 1855, power was given to the railway company to construct and maintain a wharf, &c., at Renfrew, on the banks of the Clyde. By the same Act the trustees of the Clyde navigation were enabled to make bye-laws affecting any wharf to be constructed under the Act. The present bill, among other things, repealed the powers for constructing and maintaining this wharf, and provided for the reconveyance to the promoters of the land taken under the former Act. The petitioners claimed to be heard on the ground that the bill repealed certain statutory provisions for their benefit, and re-vested in the promoters, without prescribing the use to which they were to be put, lands over which, if used for certain purposes, the petitioners could, under the former Act, have exercised a control:

Held (without calling upon the promoters to reply), that the petitioners had no *locus standi* against the bill.

The *locus standi* of the trustees of the Clyde navigation was objected to, because (1) no land or property of theirs is taken; (2) the bill does not affect any of the provisions for the protection of the rights of the petitioners contained in the Glasgow and South-Western Railway Consolidation Act, 1855; (3) the said provisions were enacted for the protection of the rights of the petitioners in respect of the wharf at Renfrew, the powers of constructing which are wholly repealed by the bill; (4) the petitioners have no interest in the common property of the burgh of Renfrew, of

which the promoters are the administrators, and are not entitled to be heard against provisions enabling the promoters to borrow money on the security of that common property; (5) the only interest the petitioners claim in the burgh common property is in respect of the fishings in the river, and this does not entitle them to be heard; (6) the petitioners have no interest whatever in the proceeds of such fishings. The only connection they have with them is under an agreement by which the petitioners are bound to pay to the promoters the average rent formerly received by them for certain fishing stations, which the petitioners have shut up in the course of improving the navigation of the river; (7) the bill contains no powers for the extension of the harbour of Renfrew; (8) the rates leviable by the petitioners are not interfered with; (9) they are not entitled to be heard according to practice.

Clerk, Q.C. (for petitioners): The petitioners are the trustees of the Clyde navigation, and as such have certain statutory rights and interests over wharves, harbour, &c., at Renfrew. The bill provides for the repeal of the powers for constructing and maintaining these wharves, and for the reconveyance of the lands taken under the Glasgow and South-Western Railways Consolidation Act, 1855, by the railway company to the corporation. By an Act of 1855, the petitioners were enabled to make bye-laws for the regulation of any wharves to be constructed on these lands by the railway company, but by the bill, to whatever purpose the land is applied, it will be free from those bye-laws. There is no mention of the use to which the promoters intend to put the land. As far as we know, they or their assignees might use the land for the very same purpose as is contemplated by the former Act, and the petitioners would have no power of enforcing the restrictions imposed by that Act.

The CHAIRMAN: The land may be sold to anybody. Can you say that you are to be heard upon a bill which is simply for the abandonment of a scheme for the erection of wharves?

Clerk: It is a repeal of provisions which were really inserted for our benefit.

The CHAIRMAN: We think the Clyde Trustees have no *locus standi*.

Agent for Petitioners, *Loch*.

Agents for Bill, *Grahames, Wardlaw and Currey*.

SHORTLANDS, KNOCKHOLT AND OTFORD RAILWAY BILL.

Petition of (1) SEVENOAKS, MAIDSTONE AND TUNBRIDGE RAILWAY COMPANY; (2) SOUTH-EASTERN RAILWAY COMPANY.

20th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. BONHAM-CARTER.)

Railway—Branch Line—Notice—Title of Bill—Part not Proceeded with—Independent Promoters—Alleged to be Really Parent Company—Rival Branch—Worked by Same Company—Competition—Parallel Lines—Territorial Arrangement—Point Not Raised in Petition.

A bill for making a branch railway was promoted, ostensibly by independent subscribers, but, it was alleged, really by the parent company. Another branch line worked by the same company petitioned on the ground that the new railway, by cutting off an angle in the existing route, would greatly injure the petitioners, though serving the parent line, and that such a result would be in breach of existing agreements. It was shown, however, that the bill as deposited—differing in this from the notice and title of the bill itself—only authorised the making of a railway to Knockholt, and not the whole way to Otford, and so the angle was not cut off:

Held, that as the injury, though threatened, was not possible under the bill as it stood, the petitioners were not entitled to a hearing against it.

Against the same bill, another railway company also petitioned. The two lines were admittedly parallel; and there was in existence a territorial arrangement between the petitioners and the parent company, with which it was suggested in argument that the proposed line would be inconsistent. The petition, however, said nothing whatever about competition, or breach of the agreement, or injury to the petitioners:

Held, that they were not entitled to a *locus standi*.

The *locus standi* of the Sevenoaks company was objected to, because (1) the proposed line would not use, communicate, or interfere with any part of their railway; (2) even assuming the allegations with respect to existing agreements and arrangements to be true—which was not admitted—they were not such as entitled the petitioners to a hearing according to practice; (3) the bill incorporated an independent company, to whom the relations of the petitioners with the Chatham and Dover company did not extend; (4) the proposed line would serve an entirely new district, and no sufficient competition was alleged; (5) the line as proposed to be constructed, could not, in fact, take away any of the petitioners' traffic; (6) no such alteration of circumstances with respect to any traffic or right of the petitioners would result from the passing of the bill as entitled them to be heard; (7) the petition did not show that any interest of theirs would be sufficiently affected to support a *locus* according to practice.

The objections to the *locus standi* of (2) the South-Eastern company were substantially identical with objections (1), (4) and (7) to the first-named petitioners.

C. N. Bazalgette (for petitioners (1)): We are the owners of a line extending from the Chatham and Dover railway at Sutton-at-Hone to Sevenoaks, and from Sevenoaks to Maidstone, worked by the Chatham company as part of their system. Various agreements and arrangements between the companies exist under statutory powers, and we certainly should not have completed our line or entered into these arrangements if we believed that anything inconsistent with them would be attempted by the Chatham company. In fact, however, differences have for a long time existed, and in 1874 an Act was passed for referring these disputes to the decision of the Railway Commissioners. Further legislation is pending, at our instance, in the present session; but every attempt to bring about a settlement is met with determined hostility by the Chatham company. This bill, according to the notices and the title, was originally intended to have been for a line running out of the Chatham and Dover system at Shortlands, and joining our line at Otford, thereby giving the Chatham company an alternative route to Maidstone, and rendering useless the portion of our railway between Otford and Sutton-at-Hone. It is true that in the bill as deposited the Otford end of the line has been dropped out, so that the proposed line now stops short of our railway, but the notices, the bill, and the plans show clearly what was the design; and this may be revived in some future session. It is true the bill purports to emanate from independent promoters, but we

believe, and contend, that it is promoted by, or at all events, in the interests of the Chatham company. In other words, the Chatham company, knowing that they could not, consistently with the spirit of the existing statutory arrangements, promote the bill in their own name, are endeavouring to accomplish indirectly and in secret what otherwise would not have any reasonable probability of success. The bill (clause 38) enables agreements to be entered into for the construction, maintenance and management by the Chatham company of the railway of the new company. If the Chatham company can make and manage the line, what further powers would be needed if they were the avowed parents of the bill? It is obvious that our line must be, sooner or later, merged in the Chatham and Dover company, and it is easy to see, meanwhile, how this new line might be made the means of starving us into terms.

Pembroke Stephens (for promoters): My learned friend is arguing on the assumption, first, that this is a Chatham and Dover line, pure and simple, and next that it goes to Otford, but in fact it stops a long way short of it. He has not shown how the construction of a branch to the right from Shortlands to Knockholt will affect a branch on the left from Sutton-at-Hone to Sevenoaks.

Bazalgette: It is necessary to bear in mind how the Sevenoaks line originated. It was promoted in 1859 virtually by the Chatham (then the East Kent company) in furtherance of the policy of that company —.

The CHAIRMAN: We do not think it material to go into the history of the relations between the companies, but you ought to be able to point out something in the agreements now existing with which you say this bill will interfere.

Bazalgette: In 1862 a territorial agreement was entered into between the South-Eastern, Chatham and Dover and Sevenoaks companies, under which the termini of these different lines, as since constructed, were fixed; the promotion of this line virtually to Otford is in the teeth of the spirit of that arrangement, as the Sevenoaks traffic will be taken away from the Sevenoaks company by the Chatham company, hitherto its ally. Under all the circumstances of the case, we ask the Court not to refuse us a hearing against a bill promoted in so doubtful a manner.

Saunders (for petitioners (2)): In our case there can be no question as to the fact of competition, or disturbance of the territorial arrangement of 1862. The proposed line runs parallel to ours for its whole length, and if completed to Otford would cross our line.

Stephens: But the petition is absolutely silent as to competition, as our objections point out.

Saunders: We say that the requirements of the district are sufficiently met by the existing railways, and other means of communication; and that, if further facilities were required, they could be better and more cheaply afforded by extensions of our existing undertaking than by the incorporation of the new company.

Mr. FORSYTH: That may or may not be; but you do not say that you will be injured by the incorporation of the new company.

Saunders: That is an almost necessary inference from what we allege as to the district being already sufficiently served.

Stephens (in reply): As to petitioners (2) their petition is clearly inadequate in its wording to admit them on the ground of competition. A *locus standi* is only granted to those whose interests will apparently be injured by the bill, and it is necessary for them to allege in their petition that they will be so injured. (*Metropolitan District Railway Bill, 1868, 1 Clifford & Stephens, 5.*)

The CHAIRMAN: Though we do not require much technicality, we think there is not sufficient in this petition to raise the point of competition.

Mr. RICKARDS: There is no statement of injury to the petitioners.

Stephens: Then as to petitioners (1) I am appearing not for the Chatham and Dover, but for the new company, and we do not accept the version given of the existing agreements. But supposing even that all our opponents' suspicions as to the origin of the bill were well founded, still, as it stands, we could do them no injury. By the construction of the proposed line to Knockholt, not a passenger upon any part of the Sevenoaks line could be taken away; in fact, the South-Eastern line, which is a shorter and directly competing route to London, intervenes, and we should have to cross it to get to Otford. Until we are there we can do them no harm.

[*He was then stopped by the Court.*]

Locus standi of both sets of petitioners Disallowed.

Agents for Petitioners (1), *Toogood & Ball.*

Agents for Petitioners (2), *Stevens.*

Agents for Bill, *Martin & Leslie.*

SOUTHWARK AND DEPTFORD TRAMWAYS BILL.

Petition of THE OWNERS AND OCCUPIERS ON THE LINE OF THE PROPOSED TRAMWAY.

23rd April, 1879.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH, and Mr. RICKARDS.*)

Tramways—Frontagers—Owners and Occupiers—Interference with Trade or Business—Limitation of Locus Standi in Terms of S. O. 135.

Against a bill for the construction of tramways the owners and occupiers on the line of the proposed tramways claimed to be heard as frontagers under S. O. 135:

Held (following the decision in *The King's Cross & City Tramways Bill, 2 Clifford & Rickards, 106*), that they were entitled to a *locus standi*, limited, however, to the words of S. O. 135.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of the petitioners will be taken under the bill; (2) none of the streets along which the tramways are to be made are the property of any or either of the petitioners; (3) the petitioners can only be entitled to be heard, if at all, as frontagers within the meaning of S. O. 135, as alleged in paragraph 2 of the petition; except as such frontagers, they show no interest which entitles them to be heard according to practice.

Worsley (for petitioners): Paragraph 2 of the petition alleges that the petitioners "are owners and occupiers of houses, shops, and warehouses in streets along which the tramways proposed to be authorised by the bill are intended to be laid, and are prepared to prove that the construction and working of such tramways will be injurious to them in the use and enjoyment of their premises, and in the conduct of their trade and business."

The CHAIRMAN: What is the point raised by the promoters?

Hoskins (agent for promoters): We want their *locus standi* to be limited in the manner in which this Court limited the *locus standi* of the petitioners in *The King's Cross and City Tramways Bill* (2 Clifford & Rickards, 106).

The CHAIRMAN: We followed the words of the S. O.

Worsley: That will satisfy us.

The CHAIRMAN: We will make the same order as we made in the *King's Cross and City* case.

Locus standi Allowed to Petitioners under S. O. 135.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

Agents for Petitioners, *Hanly & Carlisle*.

TEIGN VALLEY RAILWAY EXTENSION BILL.

Petition of GREAT WESTERN RAILWAY COMPANY.
22nd May, 1879.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH,
M.P., and Mr. RICKARDS.)

Railways, Competition between — Incomplete Scheme, Alleged — Piecemeal Legislation—Future Junction with Petitioners' Railway Contemplated—Road belonging to Railway—Allegation as to Ownership of, Insufficient.

In 1878 a railway company promoted a bill for an extension of its authorised undertaking into Exeter and its junction there with the lines of the Great Western and South-Western Companies. The bill being rejected, the same company now proposed substantially the same line, but without either of the junctions just mentioned. The Great Western company opposed the bill on the ground (1) of competition; (2) of interference with an approach road to their Exeter station, which road had belonged to their predecessors in title; and (3) also because, as they alleged, this was a violation of a previous understanding between the parties, and an attempt, by piecemeal legislation, to secure the scheme which Parliament had previously rejected, inasmuch as the promoters would be sure to renew hereafter their application for a junction with the Great Western system:

Held, that (1) the question of competition was concluded by a decision between the same parties in 1866; that (2) the petitioners did not allege that they were owners of the soil of the road, and that, consistently with the allegations in the petition, it might be

assumed that the road was now dedicated to the public; (3) that the bill could only be judged by what it contained, not by what the promoters might be supposed to contemplate hereafter with regard to the junction with the Great Western line; and that on all these grounds the petitioners' *locus standi* must be disallowed.

By the bill power was taken to extend the Teign Valley railway from a point on the authorised Teign Valley railway (near North Halston) to Exeter. The Great Western company petitioned as the owners of the South Devon line, which, in connection with the Great Western line, affords a continuous communication from Plymouth to London in the hands of the Great Western company. The petition alleged that the Teign Valley company was incorporated in 1863, with power to make a railway commencing by a junction with the Moretonhampstead and South Devon railway, in the parish of Bovey Tracy, and terminating in the parish of Doddiscombsleigh, and since that period they have obtained eight Acts amending their original powers. In 1868 the company introduced a bill into Parliament for various objects, amongst which was a deviation of their then authorised railway and an extension of time. The bill was opposed by the South Devon railway company, and the Moretonhampstead and South Devon company (now part of the Great Western system) and the South Devon company were induced to withdraw that opposition upon the faith of the undertaking given to them by the following resolution of the Teign Valley board of directors:—

“Resolved that, in consideration of the withdrawal of the petition of the South Devon railway company against the company's pending bill, this board undertakes not to renew the application of the company, either to Parliament or to the Board of Trade, for any further time for completing their undertaking beyond that limited by the said bill unless the company shall in the meantime have made substantial progress towards raising their capital and in completing their railway.”

The company were thus enabled to pass their Act of 1868, and make another struggle for existence. But in 1870 they were no further advanced. They had made no substantial progress towards raising their capital and completing their railway. Yet they nevertheless again applied to Parliament (in direct contravention, as the petitioners submitted, of this resolution) for an extension of time for the completion of their railway and for the purchase of lands, and they included in their bill powers

to run over and use portions of the petitioners' South Devon railway, between the Teign Valley junction and their Newton station. Again the South Devon company opposed the company's application, but were once more induced to withdraw their opposition on the assurance that the company had really the means to complete their undertaking, and on the omission from the bill of all the powers directly affecting the South Devon company; and the company thus obtained the extension of time they sought for, and passed their Act of 1870. In 1872 the company again came to Parliament for further powers, and were authorised to make and maintain the railways therein described; one being the original line, as authorised by the Acts of 1863 and 1868 respectively, and the other two branches, which may be described as the original line and mineral branches. These powers were, by the Teign Valley Railway Act, 1874, extended to the 9th August, 1877. In the following year, 1875, the company obtained powers to extend their line to the London and South-Western railway at Crediton. Again, in 1878, they promoted a bill to authorise not only a revival of powers to make their original railway and mineral branches, but proposed to undertake the construction of five additional railways and other works. Of these five railways the company withdrew two before the bill came before the Select Committee, and the other three were rejected by that Committee. The railways, so withdrawn by the company, were an extension in a westerly direction to Chagford and an extension in a southerly direction to Teigngrace, near Newton Abbot, and the railways retained in the bill and rejected were an extension from the company's authorised line at Doddiscombsleigh to Exeter, with branches to the petitioners' railway at Exeter, and also to the London and South-Western company's railway in Exeter. The road, in the parish of St. Thomas the Apostle, Exeter, which may be taken, used, and otherwise interfered with for the purposes of the undertaking, was constructed by the South Devon company (the petitioners' predecessors in title) at their own expense, for, among other purposes, a convenient approach to the petitioners' St. Thomas's station at Exeter, and for many years gates were maintained by them across the entrance to the road, and the petitioners alleged that any interference with that road, or with their rights and interests therein, would be most injurious to them, and they objected thereto.

The *locus standi* of the Great Western company was objected to, because (1) paragraphs 1 to 14 are merely recitals and statements of the past proceedings of the promoters and the petitioners,

some of which are substantially correct, but others are erroneous; and, except as regards paragraphs 1 and 2, none of them relate to the provisions of the bill; (2) with regard to paragraph 16, the petitioners do not show that they are the owners, lessees, or occupiers of the roads therein mentioned, nor have they any exclusive rights over or with respect to the same; the road is a public road, vested in and under the control of the local board of St. Thomas the Apostle, and the petitioners are only affected, if at all, as one of the public; (3) with regard to the remainder of the petition, the grounds of objection of the petitioners relate mainly, if not exclusively, to competition; but the petition does not show, nor is it the fact, that any such competition will arise between the railway proposed by the bill and the railway of the petitioners as entitles the petitioners to be heard on that ground. The proposed railway is intended to accommodate a district which is at present entirely without railway accommodation, the requirements of which are in no way met by the railway of the petitioners, and the proposed railway will not deprive the petitioners of any traffic which would otherwise be carried by them on their railway; (4) no property, right, or interest of the petitioners will be taken or prejudicially affected under the powers of the bill, and the petitioners have no such interest in the objects of the bill as according to practice entitles them to be heard.

Saunders (for petitioners): The proposed railway is uncalled for, and will establish an unnecessary competition with our South Devon line, depriving us of traffic which would otherwise be conveyed on that railway. The proposed railway is also an incomplete scheme, and is inferior to that rejected last session. Moreover, having no junctions with our railway at Exeter or with the London and South-Western railway there, it can only be used for local traffic and not for through traffic, and there is certainly not sufficient local traffic to justify the construction of such a railway. But even if the scheme had been more complete than it is, there is no justification whatever for such a railway. Although varying to some extent from the extensions to Exeter, rejected in 1864 and withdrawn in 1866, and from the main line of railway to Exeter, rejected by Parliament last session, it is intended to effect the same objects, and we submit that the promotion of the bill is really an attempt to reverse these decisions, which were arrived at after great care and deliberation, and that such an attempt should be discouraged by the rejection of the bill. The piecemeal principle of legislation, now attempted by the promoters, is most objectionable. A junction with our rail-

way at Exeter has been omitted in order, if possible, as we believe, to deprive us of a *locus standi* against the bill, although without such a junction any such railway would be of no practical value to the district which it traverses. There can be no doubt, however, that if the bill is passed, an application will be made to Parliament in a future session to authorise a junction with our railway, and, therefore, we submit that, as the principle of legislation adopted by the promoters is objectionable, as the scheme is incomplete, and as Parliament cannot have the whole case before it, we have a right to appear and submit that the bill should be rejected. We also claim to be heard upon the ground of competition. No doubt the decision of the Referees in the case of the same railway company, in 1866 (*not reported*) will be quoted against me. The line then proposed was a line from Chagford to Exeter, but the circumstances then were very different from those of this line now contemplated. At that time the Moretonhampstead line was not made, and the competition then was competition from Newton Abbott. If the proposed line were made, the competition would be this. People from Moretonhampstead, and all places down to Chudleigh-road, would change carriages at Chudleigh-road and go by this new line to Exeter. The distance by the existing route, round by Newton Abbott, would be 22½ miles, as against 19 by means of the proposed line.

Mr. RICKARDS: You say in your petition that the line is to serve local and not through traffic?

Saunders: That means that it affords no through communication with the Great Western, or by the London and South-Western. No junction is made with us in Exeter, and one of our grievances is, that the promoters may come afterwards for power to make a junction with us at an inconvenient point.

Thomas (for promoters): As to the allegation about the road, we can prove that the road has been repaired by the surveyor of highways for the last twenty years.

Mr. BRISTOWE: The petitioners might have alleged that they were the owners of the soil of the road, having only given an easement to the road authorities, and that they might, in case the road was ever abandoned, take possession of the road; but they have not alleged it.

The CHAIRMAN: I read the petition as implying that it is not their road, but that it is a road dedicated to the public.

Thomas: Then practically the only question is competition. The competition is too remote and unsubstantial to entitle the petitioners to be heard. The case in 1866 was precisely on all

fours with this case: though the Moretonhampstead line was not constructed it was authorised and it was leased to the South Devon. It is not to be supposed that people from different points on the Moretonhampstead line wanting to go to Exeter would get out at Chudleigh-road and get on to a line with a different gauge.

The CHAIRMAN: We need not hear you any further. We feel that to a great extent we are bound by the former decision; at all events we think that the probability of any traffic being diverted is too remote to entitle the Great Western to a *locus standi*.

Locus standi of the Great Western Railway Company Disallowed.

Agents for Bill, Toogood & Ball.

Agent for Great Western Railway Company, Mains.

TIPTON LOCAL BOARD BILL.

Petition of THE CORPORATION OF BIRMINGHAM.

13th March, 1879.—(Before Mr. RAIKES, Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas Supply by Local Authority — Proposed Alteration of Site of Works — Previous Legislation — Proviso in favour of Petitioners — Alleged Repeal of, by Bill.

By the Birmingham Gas Act, 1875, under which the corporation of Birmingham purchased the Birmingham and Staffordshire Gas undertakings, any local authority within the gas limits might, on obtaining Parliamentary powers to that effect, purchase that portion of the undertaking which was within their district. By the Tipton Local Board Act, 1876, that local authority obtained powers to supply gas within their own district, and to purchase a piece of land for the erection of gasworks, subject, however, to a proviso prohibiting them from supplying gas, until the purchase-money had been paid, and the undertaking formally vested in them. They now applied for an Act authorising them to substitute a different site for the erection of their works. The petitioners claimed to be heard against the bill, on the ground that its effect would

be to repeal the proviso in the Act of 1876. For the promoters it was contended that no such effect would result from the bill, the object of which was merely to provide a more convenient site for their gasworks:

Held, that there was *prima facie* such a repeal of the proviso in favour of the petitioners as to entitle them to be heard for their protection.

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs will be taken or interfered with, or any of their rights and privileges affected; (2) the bill in no way alters the relationship existing between the promoters and the petitioners under the provisions of the Birmingham Gas Act, 1875, and the Tipton Local Board Act, 1876; (3) the sole object of the bill is to enable the promoters to take other lands for their works than those authorised by the Act of 1876, and in such object the petitioners have no interest entitling them to be heard; (4) the promoters deny that there is any provision in the bill which would affect any legal question now pending between the promoters and the petitioners; (5) the petitioners have no interests entitling them to be heard according to practice.

Pritchard (Parliamentary agent for petitioners): The object of the bill is to enable the promoters to purchase other lands for the erection of their gasworks than those authorised by their Act of 1876. By section 14 of that Act they were authorised to purchase certain lands and to erect gasworks on them, but that section further contains this proviso, "But nothing in this Act contained shall authorise or empower the board to supply gas or gas fittings till the vesting period." Earlier in the Act the "vesting period" is defined as the execution of the transfer and the payment of the purchase-money. They have given us notice under the Act of 1876 that they will purchase, and the arbitration between us is now pending, and involves several nice questions of law. The present bill omits that important proviso. It authorises the board to erect works and to do all acts necessary for manufacturing, storing and supplying gas, and then it goes on (clause 7), "But so far as may be necessary for the purposes of this Act, so much of section 14 of the Act of 1876 as is inconsistent therewith is hereby repealed and amended accordingly." The effect of this is to repeal the proviso contained in that section and to enable the promoters to commence supplying gas as soon as they like. Further, we object to the

alteration of site, as making a considerable difference in the price we are to pay for certain distributive mains.

Cooper (Parliamentary agent for promoters): The sole object of the bill is to substitute the land scheduled to the bill for the land scheduled to the Act of 1876. The petitioners can in no way be affected by the substitution. There is nothing in the bill which affects any right of the petitioners, and the expressions used in the bill, of which the petitioners complain, are exactly those used in the corporation Act.

Mr. RICKARDS: What do you say to the repeal of the proviso to section 14?

Cooper: I say that that proviso is not repealed. By clause 11 of the bill it is provided that, "The Act of 1876 as amended by this Act and the provisions of this Act shall be read and have effect together as one Act." I submit that clause 7, when read together with clause 11, does not repeal the proviso in section 14, Power is given for the substitution of one piece of land for another, and nothing more.

Mr. RICKARDS: The question is, whether the bill would not set you free from that restriction about supplying gas before you paid for the portion of the undertaking which you take?

The CHAIRMAN: The words of clause 7 are very vague.

Cooper: If the Court think that clause 7 does repeal the proviso in section 14, I suggest that the *locus standi* be limited to clause 7.

Mr. RICKARDS: Clause 7 is almost the whole bill.

Pritchard: We should be content to take a *locus standi* limited to the clauses of the bill generally.

Cooper: The petitioners are not entitled to be heard against any other clause than clause 7.

The Referees deliberated.

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed against clauses.

Agent for the Bill, R. W. Cooper.

Agents for the Petitioners, Sharpe & Co.

WESTGATE AND BIRCHINGTON GAS AND WATER BILL.

Petition of THE THANET GAS COMPANY.

13th March, 1879.—(Before Mr. RAIKES, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Gas Companies—Invasion of District—Competition—General Locus—Territorial Limit.

The Thanet gas company were established by an Act "for the purpose of making gas, &c.," "and supplying the towns of Margate, Ramsgate, Broadstairs, and the suburbs and vicinity thereof, and parts and places adjacent, with gas." A bill was now promoted to incorporate a company for supplying gas in Westgate, Minster, Arol, and Birchington. Against this bill the Thanet gas company petitioned, on the ground that Birchington and other places proposed to be supplied by the company came within the terms defining the limits of their gas district, and claimed to be heard against the whole bill. The promoters contended that the right of the petitioners to be heard was limited to the provisions which enabled them to supply gas within any portion of the petitioners' district :

Held, that the petitioners were entitled to a *locus standi* against the whole bill generally.

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs will be taken compulsorily ; (2) it is not the fact that the limits for supply of gas defined in the bill include the whole or any part of the limits prescribed by the Act incorporating the petitioners, or in any subsequent Act ; (3) no such competition is shown, nor does any such exist as would entitle them to be heard according to practice ; (4) even if the powers of the bill affected any portion of the statutory district of gas supply now possessed by the petitioners, the petitioners would only be entitled to be heard in respect of the powers enabling the promoters to supply gas within such statutory district, and only on establishing that the bill does authorise such supply within such statutory district, and only to the extent to which such right to supply can be shown to extend ; (5) the petitioners show no such interest as entitles them to be heard according to practice.

Pope, Q.C. (for petitioners) : The contention of the promoters that our right to be heard against the bill is subject to a territorial limit, admits in fact our right to be heard against the whole bill. If the promoters could show any particular clause of the bill which would not affect our territory, we might be excluded from being heard against that provision. But the provisions as to illuminating power, price, and so on, would affect us in respect of our territory, whatever that

territory might be proved to be. We claim, therefore, to be heard against the whole bill. The Act under which we claim powers over the district, part of which is now proposed to be taken, declared that we were established for the purpose of making gas, &c., "and supplying the towns of Margate, Ramsgate, Broadstairs, and the suburbs, and vicinity thereof, and parts and places adjacent with gas." Birchington and other places proposed to be supplied by the promoters would come within those terms.

Michael, Q.C. (for promoters) : We are willing to concede to the petitioners a limited *locus standi*, namely, that they shall only be heard against the bill in so far as it seeks to supply gas within the limits of the Thanet gas company.

Pope : My friend is asking you to make a territorial limit to our opposition against the whole bill, instead of limiting it to clauses affecting us.

Michael : If the Referees go into the question whether the district of the petitioners' company was covered by the district proposed to be taken by the promoters, they will be going into the merits.

Mr. RICKARDS : It is a question of *locus standi* whether the promoters invade the petitioners' territory or not.

Michael : The bill proposes to incorporate a company for supplying gas in Westgate, Minster, Arol, and Birchington. The Thanet gas company have sold their undertaking at Ramsgate and at Broadstairs ; they therefore only have left Margate "and the suburbs and vicinity thereof, and parts and places adjoining." The area we propose to supply does not come within those limits. It could not have been intended that the Thanet gas company should supply the whole of the isle of Thanet ; if it had been, it would have been so expressed. If they prove that their limits extend over the whole of the district proposed to be supplied, the question would be open to the Committee. If they do not prove that, they must be confined to a contention as regards the limits within which they are allowed to supply gas.

The Referees deliberated.

The CHAIRMAN : The *locus standi* of the Thanet Gas Company is *Allowed* generally against the bill.

Agents for Bill, *Simson & Wakeford*.

Agents for Petitioners, *Wyatt, Hoskins, & Hooker*.

WEST LANCASHIRE RAILWAY BILL.

Petition of DAME LOUISA ELIZABETH ANNE SHELLEY, of Maresfield Park, in the County of Sussex, Widow.

27th March, 1879.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. BRISTOWE, M.P.; Mr. FORSYTH, M.P., and Mr. RICKARDS.)

Railway Abandonment—Sale of Lands by Railway Company—Landowner's Pre-emption—"Superfluous Land," Definition of—Distinction between, and Land of Abandoned Railway—Lands Clauses Consolidation Act, 1845, section 127.

A bill, authorising the abandonment of a railway, was opposed by a petitioner whose land had been bought for the purposes of the line, on the ground that the bill contained no provision giving adjoining landowners the right of pre-emption, and that the General Acts incorporated with the bill recognised this right only in the case of superfluous land, whereas, according to a decision in the courts of law, land taken for the construction of a line never made, and abandoned under statute, was not "superfluous land" within the meaning of the general Act:

Held, that the petitioner had a *locus standi* against the clause supposed to authorise the sale of the land.

The bill was one to enable the West Lancashire railway company, *inter alia*, to make new and substituted railways, and abandon parts of certain authorised lines. The petitioner alleged that she was the owner in fee of a valuable estate at and near Preston, and, in 1877, was required to sell and convey to the company certain land for the purposes of one of the railways now sought to be abandoned. This land formed part of a valuable piece of building land, and for the proper laying-out of the estate it was of importance to the petitioner that, in the event of such land not being required for the company's railway, it should revert to her. The petitioner further alleged that, in the case of railway abandonment bills, it was usual to insert a clause compelling the railway company to sell the land within a period of two years from the passing of the Act, in the manner prescribed by the Lands Clauses Consolidation Act, 1845, with respect to the sale of super-

fluous lands, and that the company should offer such land to the owner of the estate from which it was severed at a price not greater than the sum paid for it by the railway company. The bill contained no such clause, and as a court of law had decided* that the provisions of the Lands Clauses Consolidation Act, 1845, did not apply to the case of abandoned railways, and the bill incorporated no other Acts bearing upon the subject, the petitioner's interests were not protected by the bill.

The *locus standi* of the petitioner was objected to, because (1) no portion of the land affected by the bill was her property; (2) she was formerly the owner of certain land required for the purchase of the railway now sought to be abandoned, but such land has been bought and paid for, and the purchase completed; (3) she is not entitled to be heard against the proposed abandonment of the railway through her land on the ground alleged, namely, that it is of importance to her that such land should revert to her in the event of its not being used for the railway; (4) it is not usual, as alleged, to insert in abandonment bills a clause compelling the railway company to sell such lands within a period of two years, as alleged; (5) the decision at law mentioned in the petition gives her no ground for alleging that she is injured by the provisions of the bill, or any omission from those provisions; (6) no property, right or interest of the petitioner will be taken away or prejudicially affected under the bill, and, according to practice, she is not entitled to a *locus standi* on any of the grounds alleged.

Paine (for petitioner): The Lands Clauses Act, incorporated with the bill, gives the right of pre-emption to landowners in the case of superfluous land; but after the decision in the Court of Exchequer that the general Act does not relate to a case of abandonment, we shall have no right of pre-emption unless it is given expressly. Now Parliament has, both in public and in private Acts, recognised the right of landowners to pre-emption in such cases. Thus, the Abandonment of Railways Act, 1850, provides (section 27) for such sale within two years, in the manner prescribed by the Lands Clauses Acts with respect to the sale of superfluous lands. But this Act only applies to railways authorised before 1850.

The CHAIRMAN: Does this Act of 1850 say anything about the price?

Paine: Yes; it says that the owner of the land from which the land taken by the railway

* *Smith v. Smith*, L.R., 3 Ex., 282; and see also *Betts v. Great Eastern Railway Company*, L.R., 3 Ex. D., 182.

company was severed, shall have the option of buying it back at a price not greater than that paid for it by the railway company. Generally, in cases in which owners have sought to appear against abandonment bills, it has been assumed that the Lands Clauses Acts gave them a right of pre-emption; and therefore unless the bill to which they were objecting specially took away that pre-emption, the Court held that they had no *locus standi*. (*Glasgow and South-Western Railway Bill*, 2 Clifford & Stephens, 144.)

Mr. RICKARDS: Was the case of *Smith v. Smith* decided after the *Glasgow and South-Western* case?

Paine: No; but it was not called to the attention of the Referees.

Mr. RICKARDS: The petition says it is usual to insert a pre-emption clause in abandonment bills. As far as my experience goes, it is not at all usual.

Paine: It would perhaps have been more correct to say that such a clause is not unusual in abandonment bills, and it has, in fact, been inserted in the following: London, Brighton, and South Coast Act, 1868; Blyth and Tyne Valley Railway Act, 1872; North-Eastern (Additional Powers) Act, 1874; North British Railway Act, 1875; Newport Pagnell Railway, 1875; Furness Railway, 1876. If in other cases the clause has been wanting, it has been through the prevalent belief that the landowner possessed the right of pre-emption under the Lands Clauses Act. This was clearly the impression in the *London, Brighton, and South Coast* case, *Petition of J. Streatfield* (1 Clifford & Stephens, 18).

Mr. BRISTOWE: The same impression seems to have existed in the *Glasgow and South-Western* case.

Lewin (Parliamentary agent for promoters): In *Smith v. Smith* the decision turned upon the point that the railway was abandoned without the consent of Parliament, and that therefore the land was not "superfluous" within the meaning of the general Act. We take Parliamentary authority to abandon the line, and therefore the abandoned land would be "superfluous land," and the owner's pre-emption would apply.

Mr. RICKARDS: Surely abandoned land and superfluous land are two different things. In a case of abandonment the whole of the land is given up and reverts to what it was before; while superfluous land means land which, after the construction of the railway, is found to be more than is wanted.

Lewin: The words of section 127 in the Lands Clauses Act are general. The land to which the pre-emption applies is "not required for the purposes thereof;" and by the passing of the Abandonment Act the land thus becomes superfluous. But apart from this point, I say that if the line is abandoned, Lady Shelley will be better off under the bill, as it stands, than if the land became technically "superfluous" land, because under section 127, as adjoining owners, it will vest in her without her paying for it, if not sold within ten years from the time limited for the completion of the works. As to the precedents cited, the *Brighton* case was decided after the case of *Smith v. Smith*, and in the *Glasgow and South-Western* case the right of pre-emption was expressly taken away by a clause of the bill.

The CHAIRMAN (after deliberation): What clause in the bill will enable you to sell the land?

Lewin: Clause 2 incorporating the Lands Clauses Act, enabling us to dispose of superfluous land.

The CHAIRMAN: It is not for the Court to decide whether you have that power or not; but the principle of our decision is to give a *locus standi* to Lady Shelley against any clause which enables you to sell the land that was taken from her.

Mr. RICKARDS: As it has been decided that lands of an abandoned railway are not "superfluous" lands, it would seem that you cannot sell under the authority of the general Act.

Lewin: I should insert some words enabling us to sell.

The CHAIRMAN: We wish to give the petitioner a *locus standi* against the bill so far as, if at all, it authorises the sale of the land, but the order of the Court is always drawn up so as to give a *locus standi* against certain clauses. The difficulty here is that a new clause may be introduced by the promoters authorising the sale of the land, and if we limited the *locus standi* to clause 2, that would be of no use to the petitioner.

Lewin: As regards a new clause, there is a right to petition when an amendment is made.

The CHAIRMAN: It would be very inconvenient to have parties here again; but the *locus standi* must be against clause 2.

Locus Standi against Clause 2.

Agent for Bill, Lewin.

Agents for Petitioner, Paine, Layton & Cooper.

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CLIFFORD AND RICKARDS'S *LOCUS STANDI* REPORTS.

VOL. II., PART IV.

CASES

DECIDED DURING THE SESSION, 1880,

BY THE

COURT OF REFEREES

ON

Private Bills in Parliament.

BY

FREDERICK CLIFFORD & A. G. RICKARDS,

BARRISTERS-AT-LAW.

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P R E F A C E .

THE Reports now issued comprise CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Session 1880, and form Part IV., concluding Vol. II., of the Series of *Locus Standi* Reports by CLIFFORD AND RICKARDS, in continuation of the Reports of CLIFFORD AND STEPHENS.

The Index of Cases appended, together with the Index of Subjects, refer to the Reports of the four Sessions included in the Volume now completed.

Vols. I. and II., of "CLIFFORD & STEPHENS," and Vols. I. & II. of "CLIFFORD & RICKARDS," contain a Record of the Decisions of the Court of Referees for the fourteen years, from the Session of 1867 to that of 1880 inclusive.

TEMPLE, February, 1881.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1880.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1881.

ARTIZANS AND LABOURERS DWELLINGS (SCOTLAND) PROVISIONAL ORDER, (LEITH) BILL.

Petition of (1) JAMES BARRIE and JAMES HEDDLE.

23rd June, 1880.—(Before Mr. PARKER, M.P.,
Chairman; Mr. HINDE PALMER, M.P.; Mr.
RICKARDS, and Mr. BONHAM-CARTER.)

*Street Improvements—Artizans and Labourers
Dwellings Improvement (Scotland) Act, 1875—
Owner of Property within Scheduled Limit—
General Police and Improvement (Scotland)
Act, 1862—Regulations as to Property in Drains
and Sewers—Police Commissioners as Local
Authority — Ratepayers — Owners, Distinct
Interest as—Expenses of Improvements under
Bill, thrown on Local Rates—Representation—
Practice — Provisional Orders, Court will not
enquire into Preliminary Steps to Obtaining.*

The bill was one confirming a Provisional Order, authorising extensive street alterations and improvements in a Scotch burgh, in accordance with the provisions of the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875; and was promoted by the police commissioners of the burgh, as the local authority for the purpose, constituted under the General and Police Improvement (Scotland) Act, 1862. The bill involved the reconstruction and consequent removal of a considerable number

of drains and sewers, and the petitioner, who was an owner of property within the limits scheduled by the bill, claimed a landowner's *locus standi* as joint proprietor of the drains and sewers. It appeared, however, that under a section of the Police Act, 1862, the property in them as well as the management was vested in the commissioners themselves. The petitioner further claimed to be heard as the owner of rateable property within the jurisdiction of the promoters as the local authority, which would become chargeable with a heavy additional burthen to defray the expenses incurred under the powers of the bill:

Held, that as an owner of rateable property which would be subject to heavier taxation, although levied in accordance with existing legislation, the petitioner sustained such an injury as entitled him to a *locus standi* against the bill, notwithstanding the fact that in this particular case owners in Scotland are represented upon the governing body.

(*Per Cur.*) In the case of bills for the confirmation of Provisional Orders, the Court will not entertain the question whether the preliminary requirements for obtaining the Provisional Order were complied with.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or pro-

rights or interests, of theirs will be taken or affected by the bill; (3) they have as ratepayers (if they be such) no interest distinct from those of the general body of ratepayers of the Parliamentary burgh of Leith, and cannot be heard against a bill promoted by the town council of the said burgh, who are the local authority constituted by and acting under the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875, and as such representing the whole community of the said burgh, including the petitioners; (4) as owners of property (if they be such) within the jurisdiction of the said town council as local authority, they are not entitled to be heard as the bill contains no provision for altering the law regulating the rights of, or the burdens affecting the owners of property within the said jurisdiction, and secondly, because owners of property are as such, by the law of Scotland, entitled to the municipal franchise and are therefore represented by the town council; (5) their statements as to the alleged failure to observe the statutory provisions in regard to the making of the Provisional Order sought to be confirmed by the bill are unfounded, but even if true would not entitle them to be heard; (6) their petition discloses no such interest in the objects and provisions of the bill as entitles them to be heard according to practice.

Nicolson (for promoters): Mr. Heddle cannot appear for Mr. Barrie as well as for himself in person.

Heddle: I have signed the roll of Parliamentary agents and now appear for Mr. Barrie as well as myself. The object of the bill is to confirm a Provisional Order for rebuilding a large part of Leith. We allege that the petition of the town council, on which the whole procedure in Parliament is based, has had the common seal of the burgh of Leith adhibited to it, without the said petition having been considered by the corporation in a competent manner. The bill now before Parliament is brought in under the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875, and our petition alleges that it does not comply with, or satisfy, the requirements of the statute on which it rests.

Mr. RICKARDS: We cannot go into the question of whether the preliminary requirements of the statute have been complied with or satisfied. That is a matter for the Secretary of State or for the Examiner. We have to start with the bill, which proposes to confirm the Provisional Order.

Heddle: With regard, then, to our petition, we claim a *locus standi* as landowners whose property will be taken compulsorily.

Nicolson: We concede that in the case of Mr. Barrie. It appears that some of his property is scheduled.

Heddle: I am also entitled to an owner's *locus standi*, inasmuch as I am proprietor of drains and sewers within the part of the district scheduled, the cost of those drains in each of the drainage districts of Leith being spread over the owners of property within each particular district. I claim a *locus standi* as an individual proprietor.

Mr. RICKARDS: Do you say you are the proprietor of the soil in which the drains are laid?

Heddle: No; I am joint proprietor of the sewers and pipes. That property is about to be destroyed without any compensation being made, because the lines of the streets are, under the bill, to be altered; and it would be impossible for the existing drains to do the service required of them. I am chargeable for the making of these drains under the General Police Act, 1862.

The CHAIRMAN: Do these drains remain the property of the owners of the soil, or do they not vest in the public authority as owners?

Heddle: I contend that they remain the property of the owners, the administration of them being in the hands of the local authority—in this case the police commissioners. I also claim in my petition to be heard as an owner of property within the jurisdiction of the local authority, but outside the scheduled area, which will be liable to the imposition of a new rate for the expenses of carrying out this scheme. My property would virtually be mortgaged for 20 or 30 years for carrying out this scheme, and the commissioners cannot represent a private owner on this point. (*Huddersfield Water and Improvement Bill*, 1 Clifford & Rickards, 229.)

Nicolson (in reply): Under the 182nd section of the General Police Act, 1862, under which these drains were made, it is expressly provided that they are to be vested in and belong to, as well as be entirely under the management and control of, the police commissioners, who are the promoters of the Provisional Order now under consideration. With regard, first, to the petitioner's claim to be heard as an owner of property within the scheduled area, he only claims property in the drains underground, and his claim must be disallowed under the above section of the Police Act. The drains are part of a general system of borough drainage, and cannot belong to individual owners. As to the second point, that he is the owner of property outside the scheduled area, but within the jurisdiction of the local authority, which property will be subjected to heavier rates in consequence of the bill, his case is not analogous to the

Huddersfield case, nor comes within the prescribed rules entitling a ratepayer to be heard in such cases. There must either be a new rate imposed or an addition to existing rating powers, or a proposal to repeal an exemption in favour of owners, or some alteration in the administration of the local authority. None of these proposals are contained in the bill, and the statutory authority for this rate is not this Provisional Order, but the Artizans, &c., Dwellings Act, 1875, and therefore the petitioner's complaint is against existing legislation.

Mr. RICKARDS: The effect of this Provisional Order will be to impose an increased expenditure to be defrayed by the local rate, authorised by the Artizans and Labourers Dwellings Improvement Act, and therefore, while the authority to create the local rate is in the general Act, the occasion for imposing that local rate is furnished by this Order.

Nicolson: There is no case in which a *locus standi* has been granted where the result of what was proposed would simply be to make a larger expenditure under an existing power.

Mr. RICKARDS: The test of *locus standi* in all cases is, whether the bill in question adversely affects, or may adversely affect, the condition and interests of the petitioners. But for this bill this charge of £54,000 would not be imposed upon the ratepayers, but if the bill passes the additional outlay would have to be provided out of the rates which would fall upon the petitioners.

Nicolson: There is, however, no new rate or alteration in the powers of imposing rates. The following cases are in point:—*Ilkeston Provisional Order Confirmation Bill* (2 Clifford & Rickards, 118); *Dawlish Provisional Order Confirmation Bill* (*Ib.* 114); *Hucknall Torkard Provisional Order Confirmation Bill* (*Ib.* 115). Owners of rateable property in Leith stand in a different position, as regards representation by the town council, to that occupied by owners of property in England, because, under the law of Scotland, owners of property as well as occupiers are entitled to the municipal elective franchise.

The CHAIRMAN: We Allow the *locus standi* of James Heddle as well as of James Barrie.

Agent for Petitioners, Heddle.

Petition of (2) LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH AND OF THE COMMITTEE OF CREDITORS OF THE SAID CITY.

Street Improvements—Artizans and Labourers Dwellings Improvement (Scotland), 1875—Town Council—Deterioration of Value of

Security—Creditors and Mortgagees—Superiors—Rights of, as to Lands Compulsorily taken—Interference with previous Legislation—Alleged Compensation by General Law—Lands Clauses Consolidation (Scotland) Act, 1845—Petitioners as Owners and Ratepayers—Additional burthen on Property.

The magistrates and council of Edinburgh were superiors of property within the burgh of Leith, and the bill gave to the Leith police commissioners extensive powers over part of this property, for the purpose of carrying out street and other improvements, under the regulations of the Artizans and Labourers Dwellings Improvements (Scotland) Act. The petitioners complained that compulsory powers were taken over the property of which they were the superiors; that this was contrary to the provisions of a statutory agreement; and further that additional burthens for defraying the expenses of the improvement authorised by the bill would be thrown upon rateable property of which they were the owners. The petition was also signed by a committee of creditors of the city of Edinburgh, who were mortgagees of the rights of superiority under the same statutory agreement, and who alleged that their security as creditors would be injuriously affected by the bill. The promoters contended that rights of superiority, although heritable property, did not constitute the superior a landowner for the purposes of *locus standi*; that compensation for disturbance of such rights was provided for by the general law; and that no real injury to either of the petitioners could arise under the bill:

Held, however, that in the case of both the petitioners the Provisional Order sought to be confirmed by the bill affected their interests in the rights of superiority in such a manner as to entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1 and 2) their petition does not allege, nor is it the fact, that any land or property of theirs will be taken by compulsion, nor their rights, property, or interests interfered with under the powers of the bill; (3) the peti-

tioners, the corporation of Edinburgh, as superiors of a portion of the land proposed to be taken under the provisions of the bill, have no such interest as such superiors as entitles them to be heard; (4) under the Lands Clauses Consolidation (Scotland) Act, 1845, and under the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875, full provision is made for the ascertainment and settlement of the claim (if any) of the corporation of Edinburgh; (5) neither the Provisional Order, nor the bill brought in to confirm the same, contain any provision which would alter or affect the position or legal rights of the corporation as such superiors; (6) the corporation of Edinburgh have no special or exceptional grounds on which their right to petition can be founded. By the Artizans, &c., Improvement (Scotland) Act, 1875, under which the Provisional Order was granted and the bill promoted, full provision is made for the ascertainment and payment of the compensation to be paid in respect of the several interests in scheduled lands and also for injury to lands injuriously affected by the execution of the scheme. The rights of the corporation therefore are protected and provided for by the general law, and they are not entitled, according to the practice of Parliament, to be heard against the bill, which does not vary the existing general law or affect the legal rights and position of the corporation of Edinburgh; (7) even if, as alleged in the petition, the city creditors are mortgagees of the feu-duties and rights of superiority referred to in the petition, their position as mortgagees confers no right entitling them to be heard; (8) the petition discloses no right entitling the petitioners to be heard according to practice.

Shiress Will (for petitioners): We allege that we are superiors of a large portion of the property within Leith proposed to be taken for the purposes of the scheme intended to be confirmed by the present bill, from which we have derived from a remote period feu-duties and untaxed casualties; but no adequate provision is made for the continuance, or preservation, or equitable redemption of those rights of superiority, which also constitute an important part of the security conveyed by an Act of 1838 to the petitioners, the creditors of the city of Edinburgh. By the Act of 1838 (1 & 2 Vict., cap. 55), the whole feu-duties and casualties belonging to the corporation of Edinburgh, as representing the community of the city, were made over in security to the creditors of the city, and the feu-duties and rights of superiority, now sought to be compulsorily taken, were included in that security; and although the corporation of Leith were, by section 32 of the

Act, empowered within seven years to purchase the said superiorities, the price to be applied for the benefit of the said creditors, they have never seen fit to exercise that power. Under this agreement Act it was obviously the intention of Parliament that the said rights of superiority over property in Leith, still belonging to us, should be acquired as a whole, but under the scheme sanctioned by the bill, and the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, applicable to it, these valuable rights would be taken in part only and in detached parcels. While the yearly feu-duties in question are comparatively small in amount, as might be expected in very ancient grants, the casualties of superiority on the entry of vassals within the area comprised in the scheme are almost without exception untaxed; that is to say, the city as superiors are entitled to charge, and do charge, by way of fine, a year's rent of the subject on the death of the last-entered vassal. If a thorough re-arrangement of the district as contemplated under the scheme takes place, it will be almost impossible to identify the properties on which feu-duties are payable, and no special provisions are inserted in the Provisional Order by which the old distinctions will be kept up, or our rights in the properties preserved. Superiority is heritable property and such an interest in land as makes the owner of it a landowner. The estate of the superior and the vassal are concurrent ownerships, and the term feu is applicable to both of them. On failure of a vassal to pay the feu-duty, the superior has the right to take his estate back again.

Mr. HINDE PALMER: The superior is more analogous to a lord of the manor than anything else.

Shiress Will: Yes; and in many cases a lord of the manor has been allowed a *locus standi*. An interest in the lands would come under the definitions of lands in the Artizans and Labourers Dwellings Improvement (Scotland), and the Lands Clauses Consolidation (Scotland) Acts. This is a stronger case than that of the provost, magistrates, &c., on petition against the *Midlothian Water Bill* (1 Clifford & Rickards, 48), as there the mills were not proposed to be taken, whereas here some 200 houses will be pulled down, and the boundaries destroyed. I refer also to the *Caledonian Railway Bill* (2 Clifford and Rickards, 75). We also claim to be heard on the same ground as Messrs. Barrie and Heddle, viz., that we are owners of property which would be subject to a new duty. (*Huddersfield Water and Improvement Bill*, 1 Clifford & Rickards, 229; *Edinburgh Municipal and Police Bill*, on the *Petition of John Hops*, 2 Clifford & Rickards, 149.) With regard to the

creditors of the city, for whose benefit the agreement Act of 1838 was passed, their security as mortgagees will be taken without adequate provision for indemnifying them.

Nicolson (for promoters): In the *Midlothian* case the petitioners were owners as well as superiors, and in the *Caledonian* case the petitioners were feuars with rights under covenant in the nature of easements over the land proposed to be taken by the promoters of the bill. Although superiority is a valuable and heritable right it is not a tangible right, upon which you can enter. It is a claim in respect to which provision for compensation is made by section 107 of the Lands Clauses (Scotland) Act. The superior has also this protection: whenever we touch land to which the casualties of superiority attach, the superior can call upon us to redeem the casualties and all the other rights affecting the land, and under that state of things this Provisional Order will not injuriously affect or alter the rights of the corporation of Edinburgh.

Mr. RICKARDS: That amounts to the same thing as compulsory purchase. They would be compelled to sell them?

Nicolson: No; the option to call upon the promoters to redeem them rests with the superior. If we take the lands and they do not call upon us to redeem, we go into the shoes of their former vassals, and we continue to pay the feu-dues annually and the casualties of superiority when they occur. There is no injury done to the petitioners on which to found a *locus standi*.

The *CHAIRMAN*: They object to property, of which they are the superiors, being taken at all, although they may be, under the general law, compensated for what you take, and they object to your becoming feuars in place of the present feuars.

Nicolson: They will be in no worse position than they are now, because at present they are liable to the feuar selling the lands to us by agreement. With regard to the claim to be heard in respect of owning property outside the scheduled area, which, it is alleged, will be subjected to the liability of a new rate, the passing of the bill will not subject the petitioners to any new rate. They are at present under liability to the rate by existing legislation. All that this bill would do if passed would be to bring that liability into active operation.

The *CHAIRMAN*: The *locus standi* of the Petitioners is Allowed.

Agents for Bill, *Simson & Wakeford*.

Agent for Petitioners, *John Graham*.

BELFAST CENTRAL RAILWAY BILL.

Petition of THE BELFAST AND NORTHERN COUNTIES' RAILWAY COMPANY.

27th May, 1880.—(Before *Mr. PEMBERTON, M.P., Chairman*; *Sir JOHN DUCKWORTH*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Railway Companies—Intercommunication and interchange of Traffic—Local extension Lines—Railway Gauge, conflicting—Principles of Railway Legislation, Alleged violation of—Railway and Canal Traffic Act, 1854—Absence of Positive Injury.

A railway company promoted a bill enabling them to construct short lines for the purpose of accommodating various works and manufactories, and so feeding their main system with traffic. The proposed extension lines were to be constructed on a narrow gauge of 3 feet, so that wagons of the standard gauge could not use them. The petitioners were owners of a through line of railway, which, as they alleged, derived great benefit from the promoters' railway as a means of intercommunication between the environs of an important manufacturing centre, and they claimed a *locus standi* on the ground that the adoption of the narrow gauge prevented them from availing themselves of the proposed railway as an additional means of communication and interchange of traffic, in the same way as the existing railway of the promoters, which was authorised for the purposes of local intercommunication. They also contended that the bill was in violation of the general principles of railway legislation. It appeared, however, that the petitioners had no rights or powers over the promoters' existing railway which could be interfered with, and that no positive injury would be inflicted upon them by the bill:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) their petition does not allege or show that any competition between their railway and that of the promoters will arise, in consequence of the bill or of the works auth^d

rised thereby; (2) the bill contains no provisions for taking or using any part of the petitioners' lands, railway stations, or accommodations, or for affording running powers or other facilities over the same; (3) the bill contains no provisions affecting the petitioners, and (4) their petition fails to show that they have any such interest in its provisions and objects as to entitle them to be heard.

Pember, Q.C. (for petitioners): The Belfast Central company is a company whose lines of railway are at present entirely within the boundaries of the city of Belfast, and the company was instituted for the purpose of affording railway communication between the termini of the different railway companies who have trunk lines leading from the country into Belfast, and the railway was laid out so as practically to connect, among other railways, the Belfast and Northern Counties' with the Great Northern of Ireland, the Belfast Central forming, in fact, the machinery for collecting and transmitting traffic from the north of Ireland to the south.

The CHAIRMAN: Do the lines join?

Pember: In this sense, that they join through the medium of the lines of the harbour commissioners, so that the system of the promoters and the harbour commissioners may be taken as one system, though under two ownerships. Although there are no through trains, the trucks of the petitioners can go all the way from their own railway along the Belfast Central to the Great Northern railway, and in the same way, although we have not running powers over the harbour commissioners line, we can force the harbour commissioners to carry on our trucks under the General Acts. The bill proposes to form extensions and spurs for the purpose of accommodating various works and manufactories, but instead of forming them on the standard guage of 5 ft. 3 in., they propose a guage of 8 ft., which will entirely prevent our availing ourselves of them. This is contrary to the purposes for which the Belfast Central railway was authorised by Parliament, as well as antagonistic to the entire principle of mutual interchange and accommodation of traffic as expressed in General Acts, particularly in the *Railway and Canal Traffic Act, 1854*. In the *Ballymena and Larne, &c., Railway Act of 1879*, where there was a proposal to occupy the country between Port Glenore and Ballymena with a line of the 8 ft. guage, rendering it impossible for through traffic to come on by our line from Ballymena to Belfast, which is on the standard guage, the Belfast and Northern Counties' company obtained the insertion of a clause requiring, that in the event of the promoters extending their line beyond the point at

which the line would cease to be a local line, the Belfast and Northern Counties' should have the power within a certain time, by giving notice, and paying the extra cost of construction, to alter the guage of that Ballymena and Port Glenore line to the standard guage. It is true that our *locus standi* was undisputed, but it illustrates the principle upon which Parliament proceeds. If these are extensions they should be subject to the same conditions, including that of guage, as the original line.

Mr. RICKARDS: Your contention is not that the bill will inflict a positive injury upon you, but you will not derive advantages you might enjoy if it were constructed on other principles?

Pember: The ground which might be occupied by a line of the standard guage will be appropriated by one rendering through communication impossible.

Rees, Parliamentary agent (for promoters): The petitioners do not contend that we shall divert their traffic, or do them any injury. They only complain of our carrying out extensions from which they will derive no benefit. They have no running powers or rights of any kind over our railway or the line of the harbour commissioners. The Belfast Central was constructed for other objects besides forming the means of inter-communication between the existing railways. The absence of any injury to the petitioners excludes them from being heard according to practice.

The CHAIRMAN: We need not trouble you any further. We are all of opinion that the *locus standi* of the Petitioners must be *Disallowed*.

Agent for Bill, *Rees*.

Agents for Petitioners, *Sherwood & Co.*

BRITISH GASLIGHT COMPANY, LIMITED, (STAFFORDSHIRE POTTERIES) BILL.

Petition of THE CORPORATION OF HANLEY AND CONSUMERS OF GAS IN THE DISTRICT.

14th July, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company—Powers as to Capital—Local Authority and Consumers of District—Apprehended Postponement in Reduction of Price of Gas—Alleged anomaly in constitution of Promoters' Company—Price and quality of Gas not affected—Auction Clauses—S. O. 188a.

The bill was one for empowering the promoters to enlarge their works and expend further capital in the district of the petitioners, but did not create fresh capital or contain any provisions affecting the price or quality of gas. The petitioners claimed to be heard in the interests of the district as a local authority and as consumers on the question of the application of the capital within their district, which they alleged would have the effect of postponing a reduction in the price of gas to which they might otherwise become entitled:

Held, that in accordance with previous decisions, neither of the petitioners were entitled to be heard against a bill dealing only with the application of capital.

The *locus standi* of the petitioners was objected to, because (1) the allegations contained in their petition, that the inhabitants of the district will be injuriously affected by the bill, are wholly unfounded, but even if true would not entitle them to be heard; (2) the bill contains no provisions affecting the price or quality of gas as provided for in the Acts relating to the promoters; (3) the allegations in the petition as to the desire of the corporation to buy the works of the promoters, the manner in which the promoters carry on their undertaking, and the claim of the petitioners to insert clauses for a compulsory reduction of gas in Hanley, do not entitle them to be heard; (4) the petition does not disclose any interest on the part of the petitioners either as representing the inhabitants of the district, or as consumers, or otherwise, which entitles them to be heard according to practice.

Bidder, Q.C. (for petitioners): The bill is promoted by a company which is in an unique position, not having been incorporated under an Act of Parliament, except under the provisions of the Joint Stock Companies Acts, although it has obtained Acts for enabling it to exercise certain powers in the various towns where it has works. The company creates its own capital, and calls it up when it is convenient, and owing to the constitution of the company there is no control over its expenditure. The bill is one for empowering the company to enlarge its works and expend further capital at its Staffordshire Potteries station, at Hanley, which we allege will postpone the reduction in the price of gas in the district, which we should otherwise be entitled to. The bill does not

contain the auction clauses, now inserted in gas bills under S. O. 188A.

Mr. RICKARDS: Is the company subject to the Gas Clauses Act?

Bidder: Locally it is, but not as regards its incorporation. It has its head-quarters in London, and is managed by a board of directors there, who have no local interest in Hanley. If we are not heard there will be no control over the local application of capital authorised by the bill, and it will be possible for the promoters to pay dividends on that capital out of the local profits, made from us as consumers of gas. In the *Gaslight and Coke Company's Bill* (2 Clifford & Stephens, 217), the *locus standi* of the Metropolitan board of works was allowed.

Mr. RICKARDS: The Metropolitan board of works has a statutory control over the London gas companies. In other cases we have decided that neither a local authority nor consumers have a *locus standi* against a mere money bill.

Bidder: In the following cases, petitioners other than the board of works were heard:—*South London Gas Bill* (2 Clifford & Stephens, 220); *Gaslight and Coke Bill* (1 Clifford & Rickards, 22); *Harrow Gas Bill* (*Ib.* 29); *Mirfield Gas Bill* (2 Clifford & Rickards, 207); *Southwark and Vauxhall Water Bill*, 1880 (*Ib. infra*).

Pope, Q.C. (for promoters): The absence of auction clauses in the bill is accounted for by the fact that no capital is created by it. In all cases in which petitioners have been heard, the question of price was included in the bill. The bill contains no provision authorising any alterations as to price, quality, or the district to be served with gas, and the petition is only a complaint against existing legislation. None of the provisions of the Act of 1858, by which the promoters were empowered to supply Hanley district, are varied by the bill. The argument, that a reduction in the price of gas in the district will be indirectly postponed by the bill, is no ground for a *locus standi*. These powers as to capital in a bill have never been held by this Court to confer a *locus standi* on either local authorities or consumers. (*Sutton Gas Bill*, 1 Clifford & Rickards, 266; *Farnworth and Kearsley Gas Bill*, 2 Clifford & Rickards, 91.)

The CHAIRMAN: In accordance with previous decisions, we must *Disallow* the *locus standi* of both Petitioners in this case.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

ELHAM VALLEY LIGHT RAILWAY BILL.

Petition of THE LONDON, CHATHAM, AND DOVER RAILWAY COMPANY.

5th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Competition—Light Railway—Termini not Identical.

A railway company, whose line connected the towns of Chatham and Dover, claimed to be heard on the ground of competition against a bill authorising the construction of a light railway between Canterbury and Shorncliffe. The petitioners' railway did not run to Shorncliffe, but passengers booked from Chatham to Dover, and then re-booked by a third company's line to Shorncliffe. The proposed light railway was authorised to form junctions with, and use the stations of the third company, who were already competitors with the petitioning company, although by a circuitous route, for traffic between Chatham and Dover. It was urged by the promoters that the petitioners' railway did not run between the same termini as the proposed railway, which was only intended to serve agricultural traffic along its route, and, moreover, would not, on account of legal restrictions as to speed, be in a position to compete advantageously with the petitioners' line for traffic between Canterbury and Shorncliffe:

Held, that the petitioners were entitled to a *locus standi*, the fact of the proposed railway being light not being material.

The *locus standi* of the petitioners was objected to, because (1) their petition alleges no such competition as entitles them to be heard according to practice; (2) the allegation as to a contemplated monopoly to the prejudice of the petitioners would not even, if true (which the promoters deny), entitle them to be heard; (3 and 4) the bill contains no provisions for taking or using any lands, railway stations, or accom-

modations of the petitioners; (4) and affects none of their interests.

O'Hara (for petitioners): The proposed railway commences by a junction with the South-Eastern line near Canterbury, runs through the Elham Valley, which is a valley to the west of, but parallel with that traversed by the London, Chatham and Dover railway, and terminates in a junction with the South-Eastern railway, a little to the west of that company's station at Shorncliffe, power being given by the bill to use the Canterbury and Shorncliffe stations of the South-Eastern railway, and so much of the line of the South-Eastern as lies between the junction and the station in each case; and powers are taken by the bill to agree with the South-Eastern company not only for the management and working, but also for the construction of the proposed line by the South-Eastern company. Competition would be set up for local traffic along the Elham Valley, and also between Canterbury and Shorncliffe, Folkestone, and Dover. The fact of its being a light railway will not prevent competition. In the *Penicuik* case (1 Clifford & Rickards, 15) a *locus standi* was allowed against a goods line, the Court remarking that there was nothing to prevent the promoters from making it a passenger line. Although speed and the amount of tons to be carried are limited, the railway will be worked by locomotives. The proposed railway will be practically a South-Eastern line, and they are competitors for traffic in the district between Canterbury and the coast. We claim, at any rate, to go before a Committee to obtain running powers over this line, such as were granted us in 1866 over a similar line, the powers for which have since lapsed.

The CHAIRMAN: The chief competition appears to be for traffic between Canterbury and Shorncliffe.

Littler, Q.C. (for promoters): The London, Chatham and Dover company are not at Shorncliffe, and do not book through to Shorncliffe. The speed of the line being limited to twenty-five miles, the competition that would be set up by this slow line as against the advantages offered to a passenger of travelling by express train to Dover, and then re-booking to Shorncliffe, would be very slight. The line is only designed for the development of the agricultural traffic along the Elham Valley. If the object were to acquire the Canterbury and Shorncliffe traffic, the line would be made as an ordinary heavy line. Though the distance between those points is lessened by the proposed line, the time occupied in traversing it would be greater.

Mr. RICKARDS: In this case nothing turns on its being a light railway.

The CHAIRMAN: The Court is unanimous in agreeing that the *locus standi* of the Petitioners should be *Allowed*.

Agents for Bill, *Hanly & Carlisle*.

Agents for Petitioners, *Martin & Leslie*.

FAKENHAM AND MELTON RAILWAY BILL.

Petition of EAST NORFOLK AND GREAT EASTERN RAILWAY COMPANIES.

31st May, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies—Competition—Independent Line—Complicity with existing Railway Company—Proceedings of Previous Session.

Two railway companies, themselves promoters of a bill before Parliament for a joint railway for the accommodation of a district already served by their railways, opposed a bill authorising the construction of a short line of railway between two points, to one of which a railway company with whose system they were in competition was already constructing a line, and was introducing a bill into Parliament authorising the construction of a railway to the other. The line proposed by the bill did not actually join the lines of the competing company, and was also promoted nominally by independent parties, but the petitioners contended that this was an expedient adopted to defeat their *locus standi*, and that it was evident that such a junction was ultimately intended; in support of which they referred to the promotion in the previous session of a similar line by the company who were their competitors in the district:

Held, that the apprehended injury to the petitioners as competitors for the traffic of the district was, under the circumstances, sufficient to entitle them to be heard against the bill.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no power to enter upon, take, or interfere with any land, railway, or property of either of the two companies; (2) the allegations of the petition consist mainly of facts, which the promoters

do not admit, with reference to proceedings relating to a bill promoted in 1879, and to a bill promoted in the present session, not by the promoters, but by the Lynn and Fakenham railway company. These allegations do not apply to nor confer any right to be heard against the present bill; (3) the objections or merits contained in the petition confer no right to be heard; (4 and 5) the petition suggests that some connection exists between the promoters of the present bill and the Lynn and Fakenham company, and between the present bill and that promoted by that company, in consequence of which the railways proposed by the two bills may in conjunction cause competition with the petitioners. This the promoters deny, and, even if it were the case, it would not entitle the petitioners to be heard; (6) as appears from the petition any such competition, if it could arise, would only result from the construction and working of railways proposed by the Lynn and Fakenham railway bill, against which the petitioners have an undisputed *locus standi*; (7) the bill does not re-open any question raised in 1879; nor (8) will it create any competition entitling them to be heard; (9) paragraph 27 relates to a matter already decided by the Standing Orders Committee; (10) the promotion of lines to Holt and Blakeney harbour, which are remote from the proposed railway, is not affected by the bill; (11) the bill does not affect either of the petitioners in such a manner as to entitle them to be heard according to practice.

Pember, Q.C. (for petitioners): The proposed line is a short line between Fakenham and Burch, and at Fakenham there is a railway in course of construction starting from King's Lynn, while Burch is upon the Lynn and Fakenham company's proposed line, which is now before Parliament. The proposed line is nominally an independent line, and does not actually join the line in course of construction at Fakenham or the proposed line of the Lynn and Fakenham company at Burch, that is to say, there is no physical connection, but at both places a field separates the ends of the respective lines and the ends of the proposed line, but this we maintain is merely done for the sake of defeating our *locus standi*, and when once the line is made they will very soon make a junction between it and the other railways, and, although now nominally promoted as an independent line, it will then be purchased or worked by the Lynn and Fakenham. At any rate the bill puts the proposed railway into a position to be so acquired and worked, as the levels are the same, and the promoters would have a strong case to go to Parliament next year to authorise the junction, and in that case it will be generally in competi-

tion with the Great Eastern and East Norfolk railways and more particularly in direct competition with the Great Eastern between Fakenham and Norwich. The proposed line will, with the Lynn and Fakenham line, also be in competition with a line for which we now have a scheme before Parliament, which line will join the existing Great Eastern lines, and the petitioners and ourselves will then have competitive routes between Fakenham and Blakeney harbour. Our proposed line will, with the Great Eastern lines already existing, thoroughly accommodate this district. The proposed line is practically identical with a line promoted by the Lynn and Fakenham company of last year, which was rejected by Parliament on the opposition of the Great Eastern company and on their undertaking to come to Parliament for a bill this year, as they have done, in conjunction with the East Norfolk company, to construct a line between Cawston and Blakeney, so as to extend and connect the Great Eastern system and more thoroughly to accommodate the district. (*Llantrissant and Taff Vale Junction Railway Bill, on the Petition of the Ogmere Valley Railways Company, Smethurst, 145.*)

The CHAIRMAN: It has been decided that where the project forms the link of a chain, though it may not form the whole chain, that is enough to give a *locus standi* to a system with which it is in competition.

Cripps, Parliamentary agent (for promoters): There is nothing in the petition setting up competition as between this line *per se* and the Great Eastern and East Norfolk railways. Competition is only alleged as between the petitioners' lines and this line in conjunction with the Lynn and Fakenham lines. The line is nominally to Burch, but really between Fakenham and Melton. No doubt the line is very much the same as that projected by the Lynn and Fakenham last session, which was opposed and thrown out by the Great Eastern, but that was part of the Lynn and Fakenham railway, and not an independent line. The promoters of the bill are not the parties principally interested in the Lynn and Fakenham line, but are independent parties with local interest. The petitioners claim a *locus standi*, not against anything contained in the bill, but on account of the proceedings of last session which is no ground for a hearing merely because the line of railway is nearly identical, the circumstances of the promotion being entirely different. The *locus standi* of the petitioners against the Lynn and Fakenham bill of this session, authorising a line between Norwich and Blakeney, which runs parallel for half its length with the proposed line of the petitioners between Cawston and

Blakeney, is undisputed, and they will be able to raise the whole question there.

The CHAIRMAN (after deliberation): We Allow the *locus standi* of the Petitioners, although we do not think it is quite a clear case.

Agents for Bill, Dyson & Co.

Agent for Petitioners, Rees.

GRAVESEND, NORTHFLEET AND LONDON, CHATHAM AND DOVER JUNCTION RAILWAY BILL.

Petition of (1) OWNERS, LESSEES AND OCCUPIERS; (2) SIR JAMES RANKIN FERGUSON AND FREDERICK PRESTON.

5th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice—Landowners—Signing Different Petitions—Joint-owners—Duplicate Petitions by—Single Signatures of—Sufficiency of.

Against a bill for the construction of a railway, several petitions were presented, among them being (1) a petition signed by "owners, lessees and occupiers," which included the names of persons who had signed other and independent petitions as well; and (2) two other petitions that were facsimiles of each other in all respects but the signatures, each of the two joint-owners having signed a different copy. The question as to how far petitioners were at liberty to multiply oppositions was raised in the objections, but not argued, owing to an arrangement between counsel. As to the petitions of joint-owners:

Held that, in the circumstances, the two single signatures were equal to a joint-signature.

The *locus standi* of some of the petitioners (1) was objected to, because they were not owners, &c., of any lands taken under the bill, and of others of them because they had, in the same character, signed other petitions alleging similar objections, and according to usage and practice, they were not entitled thus to magnify their opposition.

As regards petitioners (2)—

The *locus standi* of F. Preston was objected to, because (1) the petition, although purporting to be throughout the joint petition of the two

gentlemen named in it, was signed only by Mr. Preston, and was, therefore, informal and irregular; (2) the petition did not disclose any interest or ground of objection, which F. Preston had separately or apart from Sir J. Ferguson, who had not signed the petition.

The like objections, exactly reversed, were taken to the *locus standi* of Sir J. Ferguson.

Little, Q.C. (for both sets of petitioners): In the first case, my friend and I have agreed upon the names which shall be struck out and retained respectively, and we shall ask the Court so to decide. As to the second case, we hold that the course taken was quite regular.

Pembroke Stephens (for promoters): The petitions purport to be joint petitions, but have not, in fact, been signed as such.

Little: My clients are joint-owners, but as time pressed they attached their names to different petitions.

The CHAIRMAN: Does not this resemble the case of a lease in duplicate, where you lodge both the lease and the counterpart?

Stephens: No individual injury is disclosed by either petition; the injury, if any, is joint, for the petitioners themselves say: "your petitioners are owners of a large and valuable estate," &c. For one gentleman merely to sign a petition containing an allegation of that kind is obviously insufficient; and our opponents feel and admit it to be so, from the fact that the second petition has been deposited. The second petition, however, does not cure the original defect, for it likewise only bears one signature, so that it is, in fact, the same mistake committed over again. Petitions are required to be signed in strict conformity with the rules and orders of the House, and one of these rules is, that a petition must be signed by the person whose signature it purports to bear, except in the case of illness, or under a power of attorney. Here it is clear that the second petitioner was under no such disability.

Little: The Standing Orders have been dispensed with so as to admit of the presentation of the second petition.

Stephens: Dispensed with, no doubt, as to the question of time, but leaving the validity of the petition itself to be tested. A petition ought to be adequately and fully signed. (*Maryport District and Harbour Bill*, 1 Clifford & Stephens, 5.)

The CHAIRMAN: We should be very sorry if there were any rule which, in our opinion, compelled us to hold that the petition was not sufficiently signed by each party.

Locus standi Allowed.

Agents for all Petitioners, *Hanly & Carlisle*.

Agent for Bill, *Bell*.

GREAT WESTERN AND MONMOUTHSHIRE RAILWAY AND CANAL COMPANIES' BILL.

Petition of (1) THE MIDLAND RAILWAY COMPANY.

3rd June, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Amalgamation—Status of Petitioners changed by Bill—Alteration in Interests of Amalgamated Company—Running Powers.

A railway company having actual access, by means of running powers over the amalgamating companies' line, to the amalgamated company's system at one point, and deriving considerable traffic at other points from the railway so proposed to be amalgamated, claimed a *locus standi* against the bill which authorised the amalgamation of the promoting companies, on the grounds that they would be injured in their competition with the amalgamating company for traffic derived from the amalgamated company's railways. It was argued that the latter company had previously to the agreement to amalgamate, now sought to be confirmed by the bill, had an interest in fostering the competition between the petitioners and the amalgamated company:

Held, that there was such an alteration in their status by the amalgamation as entitled them to be heard against the bill.

The *locus standi* of the petitioners was objected to, because (1) they allege that they have been hitherto, by means of running powers and facilities secured by statute, in a position to compete for traffic between stations and places on the Monmouthshire railway and their own, and that they have been in competition with the Great Western for that traffic, and that it has hitherto been the interest of the Monmouthshire company to keep alive that competition, which will no longer be the case; (2) the petition, however, does not deny the expediency of the amalgamation; (3) they are not entitled to be heard, because (a) the competition upon which they claim to be heard is not specifically alleged in the petition; (b) their statutory rights (if any)

are maintained in the bill; (c) their railway system is physically too remote from that of the Monmouthshire company to entitle them to be heard against the amalgamation of that company; (4) the petition discloses no rights or interests in the object of the bill to entitle them to be heard.

Venables, Q.C. (for petitioners): The Midland railway company, by an Act of 1863, obtained running powers over the Great Western south to Pontypool, at which point there is a junction with the Monmouthshire lines, and, therefore, the Midland are at Pontypool brought into connection with the Monmouthshire system, over which they have hitherto been sure of having their traffic carried on. As a matter of fact, the Midland have never exercised their running powers over the Great Western, as they had no occasion to do so as long as they were on friendly terms with the Monmouthshire company, between whose line and places on our own system there has been a considerable traffic, for which we have hitherto competed with the Great Western. Some time since, the Great Western constructed a line of their own between Newport and Pontypool, and have, of course, used it in preference to the Monmouthshire line for traffic between those points. Up to 1875 we continued to compete with the Great Western for traffic over the Monmouthshire line, but an agreement was in that year entered into by the Great Western and Monmouthshire companies for a virtual amalgamation, but without Parliamentary sanction, and the present bill is to legalize that agreement, of which we have already felt the injurious consequences in the preference given to Great Western traffic over us, it having been the interest of the Monmouthshire company up to that time to keep alive the competition between us and the Great Western, and, at all events, treat us with equal favour. The bill alters our *status* by destroying a competition from which we derived benefit, and altering the interests of one of the amalgamating companies as regards ourselves. Our *locus standi* is not defeated because, in order to bring ourselves into physical contiguity with the Monmouthshire line, we have to pass over a portion of the Great Western line, by means of running powers, to Pontypool. In the great Scotch amalgamations of 1865 and 1866, all the English railways going towards Scotland got powers or facilities. Against the Great Western and Bristol and Exeter companies amalgamation, Bristol, 1876, the Midland, coming to Bristol, had a clear *locus standi*. In that case, also, the London and North-Western, coming no nearer to Bristol and Exeter than Birmingham, also claimed, and were conceded a *locus standi*. In 1878, the Midland company promoted a bill for amalgamating with

the Glasgow and South-Western, and the Great Northern was allowed a *locus standi*.

Pope, Q.C. (for promoters): The interests of the Midland company cannot be affected to any substantial extent by the proposed amalgamation, as although there may be considerable traffic passing from the Monmouthshire railways to places on their system, the competitive traffic as between the Great Western and the Midland companies is very small. It is a question of the degree of the injurious affecting of the petitioners, and the fact that they are separated by forty miles from the Monmouthshire railways is, at any rate, strong evidence of the unsubstantial nature of their apprehended injury, especially if the fact that they have never exercised their running powers over the interposed distance is taken into consideration.

The CHAIRMAN: The *locus standi* of the Midland Railway Company is *Allowed*.

Agents for Petitioners, *Beale, Marigold & Beale*.

Petition of (2) THE PONTYPRIDD, CAERPHILLY, AND NEWPORT RAILWAY COMPANY.

The petitioners claimed a *locus standi* (as in the case of petitioners (1)), on the ground that their *status* would be deteriorated, by the fact that under the proposed amalgamation it would no longer be the interest of the Monmouthshire company to favour their traffic. There was also an allegation in the petition, that the rates and charges on the Great Western were higher than on the Monmouthshire railway, but it was pointed out, that by the incorporation of part V. (as to amalgamation) of the Railways Clauses Act, 1863, with the bill, the rates in force on the railway to be amalgamated would remain unaltered. The circumstances of the case were of a very special character, and the Court held, that the injury (if any) to be apprehended by the petitioners, was too unsubstantial to support their claim to be heard against the bill.

Locus standi Disallowed.

Michael, Q.C., for Petitioners.

Pope, Q.C., for Promoters.

Agent for Petitioners, *Bell*.

Petition of (3) THE ALEXANDRA (NEWPORT) DOCK COMPANY AND THE NEWPORT (ALEXANDRA) DOCK COMPANY (LIMITED).

The case for the petitioners was substantially the same as that for petitioners (2), but they

were primarily dock companies, although they owned a short railway and sidings in connexion with their docks, and were authorised to charge passenger fares. They claimed, as a compensation for alteration in their *status* by the proposed amalgamation, running powers over the railway proposed to be amalgamated with the Great Western. The circumstances of the case were again very special, and the Court held as in the case of the Pontypridd, &c., railway company's petition, that the petitioners had failed to establish a case of substantial injury arising out of the bill.

Locus standi Disallowed.

Little, Q.C., for Petitioners.

Pope, Q.C., for Promoters.

Agents for Petitioners, Birchams & Co.

Agents for Bill, Dyson & Co.

GREAT WESTERN RAILWAY BILL.

Petition of TAFF VALE RAILWAY COMPANY.

3rd June, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Competition—Interference with Running Powers—Alleged Additional Expense to Petitioners arising out of Bill.

The bill authorised the construction of a short line to certain docks at Cardiff, and the petitioners claimed a *locus standi* (1) on the ground of competition; (2) on account of apprehended interference with the free exercise of running powers over a small portion of the promoters' line by the introduction of fresh traffic; (3) on account of additional expense in working and maintaining a swing bridge across the river Taff, arising from the increased river traffic which would be developed by the bill. The petitioners were under a statutory obligation transferred to them upon the acquisition of a third company's line, to work, maintain, and light this bridge, but the Court held that their obligation extended to any circumstances connected with the development of the traffic, and that the bill did not alter their *status* in such a manner as to entitle them to be heard upon this point. It was decided as to (2) alleged interference with running powers, that, in accordance with decided cases, this was no ground for a *locus standi*; and

that as regards (1) competition, the circumstances relating to which were of a special character, the bill would give rise to competition (if any) of the slightest and most unsubstantial extent.

Locus standi accordingly Disallowed.

Pope, Q.C., for Petitioners.

Venables, Q.C., for Promoters.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Dyson & Co.

GREENOCK HARBOUR BILL.

Petition of THE CLYDE NAVIGATION TRUSTEES.

14th July, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Harbour Trustees—Construction of Dock—River Embankment—Navigation Trustees—Proposed Works outside Jurisdiction of—Injurious Affecting—Statutory Duties as to Maintenance and Improvement of Navigation—Absence of Positive Injury—Obstruction of Future Improvements—Loss of Revenues—Representation—Practice.

Against a bill promoted by harbour trustees for the construction *inter alia* of a dock and embankment in the lower part of a river, the trustees of the navigation of the upper river claimed to be heard on the ground that the proposed works would interfere with the future improvement of the navigation of the river, and so injuriously affect them as trustees of the navigation above the works proposed to be constructed. The petitioners did not contend that their jurisdiction extended to the portion of the river affected by the bill, but several Acts were cited in their behalf, which contained clauses prohibiting interference with, or injury to the navigation, with the maintenance of which they were entrusted, by works beyond the actual limits of their jurisdiction. It was contended by the promoters that the petitioners were represented by a body of lighthouse trustees, who superintended the navigation in the lower part of the river, but the Court declined to entertain the objection:

Held that, having regard to the duties imposed by Parliament upon the petitioners for the maintenance and improvement of the navigation of the river (which had been expressly recognised in several previous Acts of Parliament), relating to parts of the river not actually within their jurisdiction, the petitioners were entitled to be heard against the obstruction to improvements in the navigation arising out of the bill.

The Court, in arriving at their decision, took into consideration the prospective loss of revenues arising from dues upon vessels navigating the river, although the petitioners did not specifically allege such prospective loss.

The *locus standi* of the petitioners was objected to, because (1) no lands or property, jurisdiction, rights or interests of theirs can be taken or interfered with under the powers of the bill; (2 and 3) the petitioners are a statutory body and their jurisdiction under the Clyde Navigation Acts is limited to that portion of the river Clyde forming the harbour of Glasgow, as defined by the Clyde Navigation Consolidation Act, 1858, and as far down the Clyde as a certain point in that Act defined, but none of the works proposed by the bill, nor any of the powers to be thereby conferred on the promoters will be situated or take effect within, or affect any portion of the Clyde under, the jurisdiction of the petitioners; (4 and 5) the petitioners have no legal right in the portion of the river affected by the bill, which is vested in the trustees of the Clyde lighthouses and the promoters, as harbour trustees, and the petitioners form a constituent portion of, and are represented by the trustees of the Clyde lighthouses, in so far as any jurisdiction in that portion of the Clyde is not vested in, or exerciseable by, the promoters; (6 and 7) even if the petitioners would have been entitled, had not the Clyde Lighthouses Act, 1871, been passed, to be heard in connection with any works affected by, or any interference with the portion of the Clyde below the limits of their jurisdiction, they are as constituents, since the passing of the Act, of the Clyde lighthouses trust, represented by that body with regard to that portion of the Clyde, and not entitled to petition against the bill; (8) the petition discloses no ground for a hearing according to practice.

Saunders (for petitioners): The bill contains power *inter alia* to construct a wet dock on the

banks of the Clyde, and for that purpose to make an embankment in the river at a point on the convex side of a curve, which is already a great hindrance to navigation. Although this point is not within our jurisdiction we have been entrusted by Parliament with the maintenance and improvement of the Clyde above the point, and we are indirectly concerned in everything that may obstruct the navigation below our jurisdiction. It is true, as stated in the objections to our *locus standi*, that the part of the river where the works are to be constructed is under the authority of the promoters as trustees of the port and harbour of Greenock, and, outside their limits, of the Clyde lighthouse trustees, and not under our jurisdiction, but we are injuriously affected by the powers of the bill. The convex bank which it is proposed to render permanent by an embankment has always been a subject of contention between ourselves and the promoters. The construction of the embankment involves the acquisition of a large area of the foreshore adjoining it, which would permanently preclude its removal for the improvement of the navigation. We have been repeatedly recognised by Acts of Parliament as having an interest in the navigation below our jurisdiction. In an Act of 1817, although we are not mentioned by name, it was provided that nothing was to be done at the Greenock bank in such a way as to injure or obstruct the navigation of the river. In the Greenock Harbour Trustees Act, 1842, provision was made for the appointment of an engineer by us to examine into the effect of certain of the works proposed by the bill upon the navigation of the Clyde, although we had no direct jurisdiction over that part of the river. In the Greenock Port and Harbour Act of 1866, a provision was inserted at our instance to confine the carrying out of works within certain prescribed limits, and provision was made to prevent interruption of the navigation, and there was a specific saving of our rights and jurisdiction. We are as much entitled to be heard as a wharf owner or any one interested in property above Glasgow, and are, in fact, owners of works at Glasgow, as well as trustees of the navigation, and are entitled to see that nothing is done to injure our property as well as our trust. The following cases are in point:—*Fareham and Netley Bill* (Smethurst, 120); *Wrexham, Mold, &c., Quay Bill, on Petition of Corporation of Chester* (*Ib.* 179); *Greenock Harbour Bill* (*Ib.* 129); *Bradford Canal Bill* (2 Clifford & Stephens, 178); *North-Eastern Railway Bill* (*Ib.* 149); *Severn Tunnel Railway Bill* (*Ib.* 245); *Forth Bridge Railway Bill* (1 Clifford & Rickards, 20). The bill is not promoted by the Clyde

lighthouse trustees, but we should not be under any circumstances represented by them, the only connection between that body and ourselves being that the Lord Provost of Glasgow is the *ex officio* chairman of both bodies.

The CHAIRMAN: We do not consider that that is sufficient to preclude you on the ground of representation.

Pope, Q.C. (for promoters): The petition is that of a public body charged with the maintenance of the upper navigation, and they are not entitled to interfere with us in the discharge of our public duties. They do not allege in their petition that they are owners of works at Glasgow, and therefore cannot be heard as traders. Their jurisdiction terminates two miles above our works.

Mr. RICKARDS: We must take into account the pecuniary interest the Clyde trustees may have in regard to possible diminution of their dues by the prevention of vessels from frequenting the river.

Pope: That is not alleged in the petition.

Mr. RICKARDS: Not specifically, but they allege "the proposed river embankment (No. 6), and other works above described, will obstruct and imperil the free navigation of the Clyde under the jurisdiction of your petitioners, and will prejudicially affect your petitioners' rights and interests."

Pope: They do not allege additional injury arising out of the bill, but only the prevention of what might hereafter be an improvement to the navigation. By an Act of 1871 the Clyde lighthouse trustees were entrusted with the maintenance of the river and navigation below the limits of the petitioners' jurisdiction, but the lighthouse trustees were not to execute works in their jurisdiction without the consent of the Greenock harbour trustees. The petitioners as a third body, outside the other two, cannot regulate or interfere with their mutual relations in this part of the river. In the petition the question of rights of property is not raised.

The CHAIRMAN: We must assume such rights of property as the trustees of the navigation must necessarily have, such as rights in respect of dues. It is part of their case that the bill will injuriously affect them by obstructing future improvements.

Pope: The cases on the rights of one public body to supervise the performance of their public duties by another body are conflicting. Practically, however, the general question was raised in the *Clyde and Cumbrae Lighthouses Trust Bill*, on the *Petition of the Trustees of Clyde Navigation* (2 Clifford & Stephens, 157), where the petitioners' *locus standi* was disallowed.

The CHAIRMAN: The *locus standi* of the Petitioners is *Allowed*.

Agents for Bill, *Simson & Wakeford*.

Agent for Petitioners, *Loch*.

HULL, BARNSELEY, AND WEST RIDING JUNCTION RAILWAY AND DOCK BILL.

Petition of (1) THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

27th May, 1880. — (Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Competition—Power to make Working Agreements with Third Parties—Creation of Fresh Competition by Association of Existing Railways.

The bill authorised the construction of a railway from a coal district, already intersected by numerous railways, to docks, in connection with the proposed railway, at the port of Hull. The promoters conceded the *locus standi* of the petitioners against certain clauses of the bill creating running powers and traffic facilities over portions of the petitioners' system, but disputed their claim to be heard generally on the ground of competition. The petitioners' railway did not run to the port of Hull, but they forwarded traffic there from the port of Liverpool, by means of facilities over two intervening railways. The proposed railway formed connections with several railways in the district, and the bill contained a clause (98) empowering the promoters, or any future company, committee, or persons, working or using it, to enter into working agreements with the several companies in the district, including the petitioners. The clause was permissive only, but the petitioners contended that by enabling the promoters to enter into agreements with other companies, with whom the petitioners were already, in some cases, in competition, the bill really created a fresh competition. They relied on the *Metropolitan Railway* case (1 Clifford & Rickards, 173) as supporting their right to be heard against the creation of a competition by the association of existing lines:

Held, without infringing the grounds of decision in the cited case, that the *ratio decidendi* was the degree of competition to be apprehended, which the Court in this case did not consider sufficient to support the petitioners' claim to be heard.

The *locus standi* of the petitioners was objected to, because (1) the petition does not show that any competition between the promoters and the petitioners will result from the bill; (2) no property of the petitioners will be taken; (3) they have no right to be heard against clause 98 of the bill, by which working and other arrangements are to be authorised. So far as the petitioners are concerned, the clause is permissive only, and as regards other companies, the petitioners have no right to be heard according to practice; (4) the promoters admit that the petitioners are entitled to be heard against the provisions of clauses 98 and 100 of the bill, so far as they affect the petitioners, and so much of the preamble as relates thereto; but they submit that the petition describes no facts or reasons which would entitle the petitioners to be heard against any other part of the bill.

Pope, Q.C. (for petitioners): The bill takes power to construct a new railway (in competition with the existing North-Eastern) between Barnsley and Hull, forming connections with all the great lines of railway that exist in that part of the country, viz.: the Manchester, Sheffield and Lincolnshire, the Lancashire and Yorkshire, the Midland, the Great Northern, and even with the London and North-Western, by means of the Lancashire and Yorkshire. Under the bill as deposited running powers were taken over the Lancashire and Yorkshire, the Manchester, Sheffield and Lincolnshire, and over the Cheshire lines, as well as over a portion of our own line, opening up an entirely new competition between Liverpool and Hull. The London and North-Western carry on a traffic between Liverpool and other places and Hull, by interchange with the North-Eastern at Leeds, or with the Lancashire and Yorkshire at Heaton Lodge. The promoters concede our *locus standi* so far as regards the proposal to take running powers over the portion of London and North-Western between Heaton Lodge and Huddersfield (clause 96), and so far as regards the extraordinary proposal with regard to facilitating the transmission of the company's traffic over other companies' line, embodied in clause 100, but we claim a general *locus standi* against the bill as originally deposited. Our petition, besides objecting generally to the construction of the

proposed railway, objects especially to the power to be conferred upon the promoters to agree with five other companies, including ourselves, to effect working agreements to the prejudice and inconvenience of our traffic. The powers to effect such agreement extend not only to running and user powers sought by the promoters themselves, but are made available "by any company, committee, or person who may from time to time work and use the intended railways," thus admitting to the acquisition and exercise of such powers companies not now defined, and those whose interests may be adverse to, and in competition with us for traffic. Several of the companies included in that proposal are competitors with us, because, although not directly at Hull, we have an interest in the traffic between Lancashire and Yorkshire, so that in effect the bill will create a new competition. We were allowed a *locus standi* against the *Metropolitan Railway Bill*, 1875 (1 Clifford & Rickards, 173), which was a bill for uniting a number of short lines into a continuous railway, and thereby creating a competitive traffic with our own.

The CHAIRMAN: The London and North-Western have no powers east of Mirfield?

Pope: That is so, but the Lancashire and Yorkshire who run to Mirfield have powers to Hull over the North-Eastern, and we in connection with the North-Eastern, or the Lancashire and Yorkshire, have at present a large traffic between Liverpool and Hull, our own line covering about half the distance between those points, so that whereas at present the communication is by London and North-Western and North-Eastern or Lancashire and Yorkshire, by the bill as deposited a new competition would be set up to Hull by means of the proposed railway, plus the Midland, Great Northern, Manchester, Sheffield, and Lincolnshire, and the Cheshire lines, and we ask to be heard against the entire scheme. The creation of a new competition between Liverpool and Hull may by means of the working agreement be carried out without our being parties to it, and the permissive power to us to join therein does not prevent such a contingency. We object both to the construction of the railway, and the association of the existing and promoting companies. Having regard to our petition, and for the purpose of raising the question of competition, a *locus standi* against clause 98 would be sufficient.

Granville Somerset, Q.C. (for promoters): The London and North-Western, as already stated, not being themselves nearer Hull than Mirfield, their interest is too remote to found a claim to be heard on the ground of competition.

In the case cited, the railways which had been hitherto separate were to be united as one undertaking under one management, and the London and North-Western went from end to end of the chain of links, forming the competing line. If we should enter into arrangements with the various companies, the parliamentary position of the London and North-Western would remain unaltered. It is not alleged in the petition that competition between the London and North-Western and Hull is apprehended, and they cannot be heard against the power of making arrangements between the promoters and third parties for facilitating traffic between points to which the petitioners do not themselves run.

The CHAIRMAN: As regards the power to make agreements with other parties, we should consider ourselves bound by the *Metropolitan Railway* case. The objection that the London and North-Western would not be entitled to object in the case of agreements made between the promoters and third parties, would not necessarily be exclusive; but the right of the petitioners to be heard depends upon the amount of competition. In this case we *Disallow* the Petitioners *locus standi* against clause 98, and generally, except as conceded against clauses 96 and 100.

Agent for Petitioners, *Roberts*.

Petition of (2) THE TRUSTEES OF CHRIST'S CHURCH IN SCULCOATES IN THE TOWN OF KINGSTON-UPON-HULL, AND OF THE COMMITTEE OF MANAGEMENT OF CHRIST CHURCH SCHOOLS, AND OTHERS.

Railway—Obstruction of Access to Church and Schools (not scheduled)—Injurious Affecting—Trustees of Church—Incumbent—Apprehended Diminution of Pew Rents—Committee of Management of Schools—Trustees of Parsonage House Within Limits of Deviation—Landowner.

It was proposed by the bill to construct a railway in immediate proximity to a church and schools, which were, however, outside the limits of deviation. With regard to the church, it was alleged in the petition that the bill authorised the stopping up of an important public access; that the nuisance caused by the working of the trains would render the carrying on of the services difficult; and that the popularity of the church, and consequently the income

derived from the pew rents would decrease. On these grounds, the incumbent and the trustees of the church claimed to be heard, but the Court held after hearing evidence, that there was no such obstruction of access caused by the bill as to entitle the petitioners to be heard, and that following the *Loughborough-park Chapel* case the injurious affecting by the working of the trains was not a ground for *locus standi*. The incumbent was, however, admitted to a hearing on his petition as owner and occupier of the parsonage house, which was within the limits of deviation. It was sought to exclude the trustees of the parsonage house, in whom the property was vested subject to the ownership of the incumbent for the time being, but the Court granted their *locus standi* in addition to that of the incumbent.

With regard to the schools, the freehold of which was, by the founder, vested in a trustee, but the management delegated to a committee, a *locus standi* was claimed on similar grounds by the committee of management, and the Court granted their *locus standi* as to obstruction of access, against a clause which, according to the evidence, would enable promoters to stop up a street, and thereby block up the principal entrance to the schools, but refused to extend the petitioners' right of hearing as to the nuisance caused by the working of the railway or the construction of a station in the immediate vicinity, and also as to compulsory powers taken by the promoters over a piece of ground used for the purposes of the school by permission of the owner, whose *locus standi* was conceded.

The *locus standi* of the petitioners was objected to, because the petition did not allege, nor was it the fact, that any land or property, rights or interest of theirs would be taken or affected under the powers of the bill, or in the execution thereof.

Ledgard (for petitioners): There are several classes of petitioners uniting in a joint petition against the bill, viz., Rev. H. O. Bowker, incumbent of Christ church, and owner and occupier of the parsonage house, which is scheduled by the promoters; the trustees of the church itself;

the committee of management of the schools in connection with the church; the trustees of the parsonage house; and the Rev. S. King, who is the owner of a house within the limits of deviation, and of a piece of ground attached to the schools and used for the purposes thereof. There is no objection taken to the *locus standi* of the petitioners, Bowker and King, *quod* owners; but that would not enable them to raise the question of injury to the church and schools. The real objection is to the *locus standi* of the committee of management of the schools and the trustees of the church, both of which are outside the limits of deviation. These bodies are constituted under an Act of 1814, and both are entitled to be heard on account of the injury which will result from the bill to the church and schools. These form, as it were, the trade or business in which they are interested. With regard to the church, it is vested in the trustees for the benefit of Christ church district in connection with the parsonage and schools. In the *Crystal Palace and South London Junction Bill* (1 Clifford & Stephens, 45), the trustees of the Loughborough-park chapel were refused a *locus standi*, but it was there argued, on behalf of the promoters, that the injury had already been done to the chapel, and that the bill only added to the inconvenience. In other cases, where land has not been taken, but business premises have been injuriously affected by obstruction of access, the persons affected were held entitled to be heard. (*Lancashire and Yorkshire Railway (New Works) Bill, on Petition of Messrs. Ellis*, 2 Clifford & Stephens, 173; *Lancashire and Yorkshire Railway Bill, on Petition of Messrs. Brocklebank and Harris*, 1 Clifford & Rickards, 235.) Here the principal access from the parsonage to the church, and from the schools to the church, and the best access for people who use the schools and the church, is cut off, and we are in the position of persons carrying on a business upon premises especially built for the purpose. Our petition alleges the stopping up of public streets under the powers of the bill and the consequent injury to us. The railway is to be carried on a viaduct past the church and schools, which will cause obstruction to light and air as well as to access. We also allege with regard to the church that the noise of working the railway would be a great hindrance to us in carrying on the services. There is a yard outside the schools belonging to Mr. King, but of which we have for many years been allowed the use, which is actually within the limits of deviation, and in addition to that we have always used two rooms in his house for the purposes of our school, and the house is scheduled by the promoters.

The CHAIRMAN: Are you tenants at will of that piece of ground that you use?

Ledgard: It does not appear that we have any exact legal title. We have used it by arrangement with Mr. King or his father, who built the schools, for thirty or forty years.

Granville Somerset, Q.C. (for promoters): It is not pretended that this yard is the property of the trustees, who only use by permission of Mr. King, to whom notice has been given by the promoters in regard to it. We do not stop up any access as stated on behalf of the petitioners.

[At the suggestion of Mr. Rickards, the engineer to the promoters was called, and gave evidence that the bill took power to stop up two streets, but pointed out that with regard to the church, the incumbent's access would be the same as before, the railway at this point being carried upon arches eighteen feet high, while as regards the public one access only would be interfered with.]

Ledgard: The evidence, however, shows that the approach to the church for the public will be rendered less convenient, and that would have the effect of diminishing the numbers of the congregation, and consequently the pew rents, upon which the incumbent largely depends for his own income and for defraying the expenses of the services. Another cause of diminution of the pew rents will be the destruction of house property in the neighbourhood for the construction of the railway and station. At any rate the principal access to our schools can be blocked up; a piece of ground is scheduled which is necessary for the purposes of carrying on our business as managers of the schools; and we are entitled to be heard against the construction of a railway station in the proximity of the schools. We also allege that our light and air will be obstructed, both in the case of the church and schools. On that point we are on all fours with the *South-Eastern Railway* case (1 Clifford & Rickards, 258). In the case of the *Midland Railway Bill*, 1880, on the *Petition of Maltby*, *infra*, the petitioner was heard against obstructing the access to a public-house.

Mr. RICKARDS: With regard to the *South-Eastern Railway* case, the Court went to the very confines of their discretion in granting a *locus standi*.

Granville Somerset (in reply): This case is governed by the *Loughborough Chapel* case, which has never been over-ruled. The Rev. H. Bowker is the incumbent of Christ's church, and his *locus standi* is conceded, so that he will be able to raise any question referred to in his petition. The same applies to the petition of the Rev. S. King. If the bill were to cause a

diminution of the pew rents the trustees of the church would be compensated, but one access only will be obstructed, which will make the approach for the public from one direction rather more circuitous.

The CHAIRMAN: The Court is of opinion that as regards the church no case for a *locus standi* is made out.

Granville Somerset: With regard to the schools, the committee of management are simply a body of gentlemen who voluntarily undertake the management. They have no legal power of any sort or kind, and the school is only a school attached to the church.

The CHAIRMAN: In whom is the property of the schools vested?

Granville Somerset: The freehold of the schools, which were built by the father of the Rev. S. King, was conveyed in perpetuity to the Archbishop of Canterbury for the time being, and a committee of management was also appointed, who manage the school and are responsible for the receipts from the scholars. With regard to the piece of ground used as a yard to the school, which is scheduled, the *locus standi* of the Rev. S. King, who is the owner, is admitted, so that he can raise any question as regards it. As to the entrance to the school the powers of the bill might render it necessary to go a few yards further round.

The CHAIRMAN: By stopping up Egginton-street, which the bill authorises, the only access would be by a back door.

Granville Somerset: At any rate the *locus standi* of the trustees of the school ought to be limited to interference with the access.

The CHAIRMAN: It would be limited to clause 18, which authorises the stopping up of the streets. In whom is the parsonage house vested?

Ledgard: In a separate body of trustees.

Granville Somerset: We have conceded a *locus standi* to the incumbent, which would be sufficient.

The CHAIRMAN: We are of opinion that the trustees of the parsonage house are entitled to a *locus standi*.

Locus standi of Charles Walsham and others (Trustees of Christ's Church) *Disallowed*.

Locus standi of Rev. H. C. Bowker, incumbent of Christ's Church, *Allowed*.

Locus standi of Rev. H. C. Bowker, William Easter, and W. J. Lunn, M.D. (Committee of Management of Christ's Church Schools) *Disallowed*, except as against so much of clause 18 as relates to the stopping up of King-street and Egginton-street, and so much of the preamble as relates thereto.

Locus standi of William Easter, W. J. Lunn,

M.D., and the Rev. Samuel King, M.A. (Trustees of Christ's Church Parsonage House) *Allowed*.

Locus standi of Rev. Samuel King, M.A. (owner of messuage or dwelling house and premises adjoining Christ's Church School premises) *Allowed*.

Agents for Petitioners, *Sherwood & Co.*

Agent for Bill, *Rees*.

HULL LIGHTING BILL.

Petitions of (1) SUTTON, SOUTHCOATES, AND DRYPORT GAS COMPANY; (2) KINGSTON-UPON-HULL GAS LIGHT COMPANY; (3) BRITISH GAS LIGHT COMPANY, LIMITED.

11th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH, and Mr. RICKARDS.)

Gas Companies — Municipal Corporation —
Electric Lighting of Streets by—Competition
between Gas Companies and Corporation—
Monopoly of Gas Companies, question as to—
Single Ratepayers.

A municipal corporation who alleged that their local Act enabled them to provide for street lighting within the borough by means of gas, oil, "or otherwise," sought statutory powers to raise money for the purpose of public lighting by electricity. The bill was opposed on the ground of competition by three gas companies which lighted different parts of the borough; and in their behalf it was urged that under the local Act, as under the Public Health Act, 1875, the corporation could not do more than contract for a supply of the means of lighting whether derived from gas, electricity, or other sources, and that a competition with private enterprise, carried on by the help of public rates, stood on a different footing from a competition between gas companies:

Held, that the petitioners were entitled to a general *locus standi*.

The bill was entitled "A bill to make further provision for lighting the borough of Kingston-upon-Hull, and to extend the powers of the mayor, aldermen, and burgesses of the borough in relation to the supply of light by electricity."

and for other purposes." It proposed to enact that "during a period of ten years, for the purposes of lighting streets and places of public resort, it shall be lawful for the corporation, within the limits of this Act, to supply light by means of electricity, and for that purpose to exercise any of the powers hereinafter mentioned."

The *locus standi* of the three companies was objected to on similar grounds, because (1) the bill, so far as it relates to the petitioners' district of gas supply, merely contains supplemental and auxiliary powers for enabling the corporation to more efficiently perform the duty imposed upon them by Parliament of lighting the streets and public places within the said district; (2) the bill contains no power enabling the corporation to light and supply with gas, for private use, any portion of the petitioners' district of supply, and the petitioners, therefore, are not entitled to be heard on the ground of competition; (3) the corporation being under no obligation to use the petitioners' gas for lighting the public streets and places of public resort, the petitioners are not damaged by the corporation making or seeking to make better provision for lighting the public streets and places within the petitioners' district of supply; (4) inasmuch as Parliament has not conferred upon the petitioners any exclusive right of lighting their said district of supply, but only a power to lay down mains and pipes in the streets for supplying gas for illumination, the conferring of the powers contained in the bill for providing and supplying light by electricity for public purposes only, does not infringe upon or interfere with any rights or powers of the petitioners; (5) the bill will not empower the corporation to injure or interfere in any way with the petitioners' mains and pipes laid down in the streets and other places; (6) as single ratepayers the petitioners are not entitled to be heard against the proposed application by the corporation of the public funds and rates under the control of the corporation for the purposes of the bill; (7) the bill does not seek to interfere with the business of the petitioners, nor does it contain any provisions which are injurious to the petitioners or inconsistent with the exercise of their Parliamentary powers; (8) the petition discloses no grounds which entitle the petitioners to be heard.

Michael, Q.C. (for the Sutton, Southcoates and Dryport gas company, and for the British gas light company, limited): The three petitioning gas companies divide the borough between them, and supply different districts. We ask to be heard on the ground of competition; and we also object to the application, by

the corporation, of public moneys for the purpose of competing with private enterprise.

The CHAIRMAN: Is there any precedent for such a bill?

Michael: The only case like it is the Liverpool Lighting bill of last year. Against that bill the Liverpool United gas company appeared in the House of Commons, because in the bill as originally deposited, there was a clause giving power to the corporation to acquire the undertaking of the company, but the bill went to the House of Lords without any such clause, and there the *locus standi* of the company was objected to, but was allowed after argument. Here the corporation not only seek power to supply the public streets, but also to light places of public resort.

Littler, Q.C. (for promoters): We are ready to strike out of the bill all powers except those relating to the lighting of the streets, and in that case would allow the companies a *locus standi* for the purpose of seeing that the authority to supply places of public resort is struck out of the bill.

Michael: That would not satisfy us. Besides the powers just mentioned, the corporation ask to be enabled to erect storehouses for storing electricity, and to let and sell steam engines, gas engines, and meters, and various other machines, and to acquire patent rights, and they also seek to provide motive power and heat by electricity. On the faith of things continuing as they are, we have expended very large sums of money in providing for the corporation that which they had the power to provide for themselves, and which they should have provided out of the public funds, that is to say, the standards, brackets, and means of lighting. We therefore have a special right to be heard upon the question of the public lighting. At present, under the Public Acts, the corporation cannot themselves supply gas. Where there is an existing gas company, corporations are required to contract for the supply of light. Here, therefore, for the first time, the corporation are seeking to do a thing entirely in contravention of all the powers given them by the Public Acts. Up to 1875 the only power which a local authority had was to contract with any parties for three years. That state of things was altered by the Public Health Act, 1875. Local authorities (section 150) may compel the paving of private streets, and when those streets are paved, they are to provide the means of lighting them. By section 161 urban authorities may contract with any person for the supply of gas or other means of lighting the streets, markets, and public buildings in the district, and may provide such lamps, posts, and other materials and apparatus

as they may think necessary for lighting the same. Where a gas company exists in a district, local authorities are strictly limited to the exercise of those powers, and cannot provide gas for themselves or do anything towards such supply unless they obtain a special Act; but where there is no gas company exercising statutory powers, or where the district of such gas company does not include the municipal area, then a corporation may themselves supply the means of lighting within the whole or any part of such area, and to facilitate this object they may proceed under a Provisional Order. This was an entirely new power; but as there are existing gas companies here, the corporation in this case can only contract with other persons or companies for a supply of the means of lighting. To their entering into such a contract with other persons for the supply of electric light we should have no objections, but we do object to their competing with us by supplying light by electricity even for the public lamps by means of the public money. We are bound to light the streets when called on to do so by the corporation, and we have done so. In performing this duty we have expended large sums of money, and we are entitled to be protected from the competition now proposed.

Saunders appeared for Kingston-upon-Hull gas-light company.

The CHAIRMAN: As the case of all the gas companies appears to be the same, it may save time if we hear at once the promoters' reply to this case.

Littler (in reply): These gas companies have no more right to be heard on the ground of competition than the stage coaches had to be heard against the railways.

Michael: The stage coaches had no statutory powers; we have.

Littler: We are not bound to go to these particular gas companies; we are entitled to go to anybody for any lighting medium we please. We have also statutory powers in this matter, for the Kingston-upon-Hull Improvement Act, 1854, enables the local board (now the corporation) to "cause the several streets," within the borough, "to be lighted either by means of oil or by means of gas or otherwise" (that is, by some other process) "at such times and seasons as the local board shall think fit;" and we are empowered to provide all the necessary lamps, lamp-posts, &c. Thus we might contract for a supply of oil, and build a sufficient warehouse to store it, and light the streets by this means, and the gas companies would clearly have no *locus standi* against a bill to raise the requisite money. The same argument applies to this proposal to raise capital for a supply of light by

means of electricity. We only propose to light the streets of the borough, not to compete with the gas companies in the supply of private consumers; and as to the public lighting, the corporation have no monopoly: another gas company might come in and supply gas for this purpose.

Mr. FORSYTH: You say that you have the power to supply the public lamps with light by electricity without coming for an Act of Parliament?

Littler: Yes. All that we are obliged to come to Parliament for is the power to raise the money. If we had the money we might do everything that we are proposing to do by this bill, under the words "or otherwise" in the Act of 1854.

Michael: Both the local Act and the public Act give the corporation power to contract with other parties for the street lighting, but they do not enable the local authority themselves to supply gas.

Littler: One local Act clearly contemplates the supply by us of light from oil, if we liked; or some other means of lighting besides gas.

The CHAIRMAN: In what position are the gas companies with regard to the public lighting?

Michael: One of the companies I represent has a contract from year to year, and the other a contract for three years.

Littler: Pending these contracts we can do nothing, and the bill does not affect them; but when the existing contracts are expired, we are not bound to renew them, and might contract with any other parties.

Mr. FORSYTH: How are the gas companies more damnified if the corporation supply the means of lighting by themselves, than if they supply it by contract with third parties?

Michael: In one case it is only a competition between two gas companies. It is a different thing when a corporation proposes to compete with a gas company by means of the rates. In this case the corporation say it is necessary they should have the power to take up streets, and lay down pipes and wires, and do all things incident to providing a supply of light from electricity. They are, therefore, asking leave to make an experiment, which, if successful, will tend to depreciate our undertakings—the property they seek to possess—and they will carry on this competition with private enterprise by public money.

Mr. RICKARDS: You admit that they might contract with third parties to provide electricity for the purpose of lighting the streets, but you object to their going beyond that, and becoming manufacturers of the article and suppliers of it?

Michael: And suppliers to themselves—

contrary to the Act of Parliament, because though they may contract for the supply of gas or electric lighting, they themselves have no statutory powers of manufacturing and supplying.

Mr. RICKARDS: Whether they contracted with other parties for the means of lighting, or supplied it themselves, they would equally do so out of the public rates.

Little: We could say to any one of these companies, "As you have refused reasonable terms, and will not light the streets at a fair price, we shall go to one of your neighbours. Take away your lamps and posts and pipes, if you like." All that we ask for is the power of applying larger funds than we have in hand in performing a public duty, that is, the lighting of the streets. The companies say, "We object to any such application of the rates;" but what interest have they differing from that of other ratepayers in Hull? As to their allegation that they have gone to a large expense in providing lamps, posts, and pipes, that is a matter which they ought to have considered in making their contract, and probably, if they had to take away this plant, they would obtain some compensation.

The CHAIRMAN: In this case we have determined to *Allow* the *locus standi* of all the gas companies.

General locus standi Allowed.

Agents for the Sutton, Southcoates & Drypool Gas Company, *Basters & Co.*

Agents for the Kingston-upon-Hull Gas Light Company, *Maples, Teesdale & Co.*

Agents for the British Gas Light Company, *Sherwood & Co.*

Petitions of (4) THE KINGSTON-UPON-HULL DOCK COMPANY; (5) THE NORTH-EASTERN RAILWAY COMPANY.

12th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH, and Mr. RICKARDS.)

Streets, Soil in, claimed by Dock Company—And by Railway Company—Corporation, as Road Authority—Streets, private Ownership of—Interference with, by Corporation, for Electric Lighting—Landowners' rights as to Streets—Public Health Act, 1875—Gasworks Clauses Acts, 1847 and 1871—Rating of Railways—Three-fourths exemption of, for Local Purposes—Single Ratepayers, Opposition by.

The Public Health Act, 1875, vests in local urban authorities the control of roads and

streets within their respective jurisdictions, if repairable by them. The dock company and the railway company, within the borough of Hull, claimed the ownership of the soil in certain streets or parts of streets, the repair of which devolved upon the two companies; and in respect of this ownership they claimed a general *locus standi* against a bill promoted by the corporation for public lighting by means of the electric light. For the purposes of this bill the corporation would have power to take up the roadway in these streets; and a limited *locus standi* was conceded to both petitioners for the protection of their interests in this respect. The railway company also claimed to be heard, on the ground that, under the bill, their property would be assessed to its net annual value, whereas they were entitled, under the Public Health Acts, to a three-fourths exemption in certain cases:

Held, that the petitioners were entitled to a general *locus standi* as owners.

Clause 4 of this bill provided that the corporation might exercise, within the limits of the Act, as to electric light, any of the powers vested in or exercisable by a corporation or sanitary authority under the Acts relating to municipal corporations, or the Public Health Act, 1875, for lighting by oil or gas, and also any of the powers which, under the provisions of any Act incorporating the Gasworks Clauses Act, 1847, or the Gasworks Clauses Act, 1871, might for the purpose of any gas undertaking be exercised by the undertakers. Section 6 of this Gasworks Clauses Act, 1847, enacts that the undertakers may, under supervision, open and break up the soil and pavement of the streets and bridges within the limits of the special Act.

The *locus standi* of the dock company was objected to, because (1) the bill does not give power to the corporation to take or injuriously affect, or, unless required by the petitioners, to enter upon or interfere with any lands or property of the petitioners; (2) the bill does not contain any provision to enable the corporation to interfere with the soil of the petitioners lying under any of the public streets, but only gives power to break open the surface of the streets which is already vested in the corporation; (3) the petitioners, as single ratepayers, cannot com-

plain of the proposed application, by the corporation, to the purposes of the bill, of the public funds and rates, under the control of or leviable by the corporation. It is not true, as alleged, that the petitioners contribute about one-seventh part of the rates of the whole borough; (4) the exercise of the powers in the bill outside the borough will not affect the petitioners; (5) no ground of objection is disclosed which, according to practice, entitles the petitioners to be heard.

The *locus standi* of the North-Eastern railway company was objected to, because (1) no lands, railways, stations, buildings, works, or other property will be taken or injuriously affected; (2) the petitioners will not be required to take a supply of light from the corporation; (3) the petition discloses no grounds which entitle the petitioners' railways and property to partial exemption from rates leviable under, and for the purposes of the bill; (4) although the petitioners may be the owners of several railways and other works within the limits of the bill the corporation will not be authorised to enter upon, or interfere with, or to execute and maintain any works which will affect or interfere with any of the petitioners' railways or works, or be detrimental to the passenger and other traffic on their railways; (5) no grounds of objection are shown which entitle the petitioners to be heard.

O'Hara (for the dock company): We are a corporation created by 14 Geo. III., under which we are bound to keep up and for ever maintain within the borough certain streets, of which not only the surface, but the soil, is vested in us. We are charged with the duty of maintaining those streets, the corporation having nothing to do with their repair. The property abutting on these streets has been sold without the usual rights of the owner on each side to the soil of the road up to the middle of the roadway, and the soil, as well as the surface, therefore belong to us. By the bill the corporation will be able to exercise over the streets of the borough the powers of a gas company. To this power we object. In the Acts of the gas companies lighting the town of Hull saving clauses have been inserted, providing that the gas company shall not stop up or interfere with any of the streets "belonging to or vested in the dock company" without the previous consent of the dock company. These saving clauses take our streets out of the definition of a street in the Public Health Act.

Little, Q.C. (for promoters): We were not parties to these provisions, nor do the petitioners allege that these streets are their private property, and therefore we do not traverse it in

our objections. The petitioners, indeed, say that these are public streets.

O'Hara: These streets are, in a sense, public streets, no doubt; but the duty of maintaining and repairing them is cast upon us, and they are vested in us as completely as a public road is vested in the trustees of that road. It has been decided (*Coverdale v. Charlton*, L.R. 3 Q.B.D. 376; and 4 Q.B.D. 104) that those persons on whom rests the duty of maintaining the surface of the road, have not only the actual surface, but that which is necessary for the maintenance of the surface, and, therefore, for all practical purposes, we are within the meaning of the term "road authority." Indeed, in the Continental and General Tramways Company's Provisional Order, 1872, which applies to Hull, we are acknowledged as the road authority. The ruling in *Coverdale v. Charlton*, therefore, applies to us; and under the Public Health Act, section 149, only streets repairable by the inhabitants at large vest in the urban authority. On other grounds the case is governed by the *Castleford and Whitford Gas Bill*, *Petition of Mr. Wheeler* (2 Clifford & Rickards, 79).

Little (in reply): The petitioners say that the exercise of the powers of the Gasworks Clauses Acts, as sought by the bill, "involves the breaking up and interference with public streets, the soil of certain of which belongs to them"; and they "object to any such interference with their property and estate." They do not say how these streets are in any different position from the rest of the public streets; and there is nothing to show that the petitioners are in any other position than the owners of the houses in Great George-street close by, where, though the soil belongs to the owners on either side up to the centre of the roadway, the street is clearly vested in the board of works of the district.

The CHAIRMAN: There is a statement in the petition that the soil of these streets is vested in the dock company.

Little: In every case the soil is, *ex concessis*, vested in the adjoining owners; and the argument in *Coverdale v. Charlton* proceeded on the assumption that nevertheless the surface of the street, and so much of the sub-soil as was necessary for the purposes of the local authority, vested in them.

Mr. RICKARDS: How do you say the petition ought to have stated the petitioners' claim?

Little: It ought to have stated that the surface of the street was not vested in the local authority, and then we might have had the town clerk to give evidence to the contrary. Under our local Acts we have the power to light

the streets with gas, oil, "or otherwise;" and under the interpretation clause in the Public Health Act, such streets would include all the public streets in whomsoever the soil might be vested.

The CHAIRMAN: We Allow a general locus standi to the Dock Company as owners.

Butler, Q.C. (for the North-Eastern railway company): Our case is on all fours with that of the dock company, but we raise another question, namely, that as owners and occupiers of rated property within the borough we are affected in a different way from ordinary rate-payers. This distinction, as regards railway property, is recognised by the Public Health Act, and in nearly all local Acts; and we ask that if any further powers of rating for lighting purposes are conferred upon the corporation, such powers should be consistent with the provisions contained in the Public Health Act. Under that Act, which merely continued existing legislation, the expenses incurred in putting the Act into execution were to be charged upon general district rates, to which railways are assessed at one-fourth only of the net annual value. From the borough rate railway companies have no such exemption; and we complain that the corporation should, by their bill, have deviated from the rule established by the Public Health Acts, although they propose in other respects to exercise the powers thereof, and have sought to charge upon the borough fund the expenses of carrying the proposed bill into effect. We object to the proposed powers of lighting altogether; but if, notwithstanding our objections, these powers are conferred upon the corporation, we ask that the differential principle of rating prescribed by the existing law should be maintained in the bill. There can be no question of our right to be heard on that point. (*Leeds Corporation Bill*, 2 Clifford and Rickards, 181.) Further, we object to the bill on the ground that the corporation will thereby be authorized to enter upon and interfere with our land and premises, and to execute works which may affect our railways and stations. If such powers are conferred they should be accompanied by provisions for our protection. Our railway encircles the town, and we cross or are crossed by several roads and streets, some on the level, some by over-bridges and under-bridges. The bill would give the corporation power to break up the soil of those streets and roads for the purpose of supplying electric light. Where a street crosses the railway on the level the corporation would have the right, under section 6 of the Gasworks Clauses Act, to open up the railway.

Little (for promoters): I concede that,

so far as level crossings and bridges are concerned, you ought to have a *locus standi*.

Bidder: We claim a general *locus standi*, and have as much right to one as the dock company. In the case of level crossings the soil is ours, and in such a case we are entitled to a general *locus standi*. (*South London Gas Bill*, 2 Clifford and Stephens, 219.)

Little (in reply): In the *Lancaster Water and Improvement Bill* (1 Clifford & Rickards, 237), a limited *locus standi* was given to the London and North-Western railway company in respect of interference with their bridges.

Bidder: The question whether the railway company were entitled to a general *locus standi*, was not argued there, for they did not claim a general *locus standi*.

Little: The petitioners are protected by the General Acts. We cannot go into private lands without consent; but these level crossings and bridges are not private lands belonging to the railway company. They form a part of the public streets; and, by our local Act of 1854, we have a right, for the purpose of supplying lamps, to go through any streets. Though the obligation may be upon the company to repair the roads over the railway, or roads under the railway, the possession of the soil is not vested in them; the corporation have the control over those streets.

Bidder: Not so. It is only where the streets are repairable by the corporation that the streets vest in them; and *quoad* these bridges the soil does not vest in the corporation.

Little: By the Railways Clauses Act the burden is imposed upon the railway company of keeping the road in repair, notwithstanding that it is a public road. Before the railway came, the railway was a road vesting in the local authority; and if the railway company substitute another road, it is absurd to suppose that the local authority become divested of the control over the substituted road.

Mr. RICKARDS: The law casts upon the railway company the onus of maintaining the roads at the level crossings and at the bridges; and then the Public Health Act gives the corporation control over those roads only which are repairable by the corporation. How, then, can you claim jurisdiction over that which is by law repairable by other parties?

Little: Because it is a highway within the definition of the Public Health Act. No doubt there are streets in towns which are private streets, but these are not private streets. It could not be pleaded in a case of furious driving that this was not a highway.

The CHAIRMAN: Is there any Act besides your local Act, to which reference has been made,

which vests the highways in the corporation of Hull?

Littler: The common law vests all streets in the road authority. The provision in the Public Health Act vesting in the corporation all the streets repairable by them is in addition to the ordinary rights given by common law, and not in substitution of them. It is going too far to recognize a railway company as landowners, and to say that when they are allowed as a matter of grace to do away with a road, the public are to lose their rights over the substituted road.

The CHAIRMAN: Having regard to the cases cited, we think we cannot do otherwise than give a general *locus standi*.

Locus standi Allowed.

Agents for Bill, *Durnford & Co.*

Agents for North-Eastern Railway Company, *Sherwood & Co.*

Agents for Dock Company at Kingston-upon-Hull, *Dyson & Co.*

HUNDRED OF HOO RAILWAY BILL.

Petition of (1) LONDON, CHATHAM AND DOVER RAILWAY COMPANY.

4th March, 1880.—(Before Mr. RAIKES, M.P., Chairman of Committees, in the Chair; Mr. PEMBERTON, M.P.; Mr. FORSYTH, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Working Agreement with Third Company—Competition Resulting from—Alleged Difference in Class of Traffic to be Accommodated—Common Termini.

A railway bill authorised the promoters to extend an existing railway to the shores of a tidal river, and to construct a pier and jetty there in connection with it. The promoters had already sealed an agreement with a third company to work the whole of their railway, and the bill confirmed that arrangement. The proposed railway would, together with the working company's own railway, form a continuous route from London to the deep waters of the Medway, between which points the petitioners' railway already ran. The petitioners claimed to be heard on the ground of competition, but the promoters contended that the pro-

posed railway was intended to accommodate a different class of traffic to that carried by the petitioners:

Held, however, that the petitioners were entitled to a *locus standi*, on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) no such competition between themselves and the promoters will arise from the bill as entitles them to be heard according to practice; (2) the bill contains no provisions for taking or using any parts of their lands, railway stations, or accommodation, or for running engines or carriages upon, or granting facilities over them; (3) the bill is not, as alleged, instigated by the South-Eastern railway company, and the proposal that the South-Eastern company should work the railway authorised by the Hundred of Hoo Railway Act, 1879, and the proposed extension railway and jetty pier, or landing place, in no way entitles the petitioners to be heard; (4) none of the powers of the bill affect the petitioners, who have no such interest in it as entitles them to be heard.

O'Hara, (for petitioners): We ask to be heard on the ground of competition. The bill provides for the extension of a railway, authorised in 1879, to the shores of the Medway, where it is proposed to construct a pier and jetty, and the effect will be, by means of the existing North Kent line, to connect the Medway, opposite Queenborough, with Gravesend. The South-Eastern company have sealed an agreement with the promoters to work the proposed, as well as the authorised railway, which the bill confirms; and at a public meeting of the South-Eastern company, it was stated by an official of the company that they were going to work the line in competition with the London, Chatham and Dover railway. The termini at each end of the competitive lines are common to both, viz., London at one end, and the deep waters of the Medway at the other. The proposed pier and jetty is almost opposite Queenborough, on the other side of the Medway, where the London, Chatham and Dover railway brings traffic to the deep waters of the Medway. (*Caledonian Railway Bill*, 2 Clifford & Rickards, 76; *Pinner Railway Bill*, *Ib.* 214.)

Littler, Q.C. (for promoters): The object of the bill is to get the best route for cattle between the deep water of the Medway, as well as the pastures in its vicinity, and the foreign cattle market at Deptford, with which the Chatham and Dover company have nothing to

do. The competitive traffic between the two companies would be of an unsubstantial nature. (*Metropolitan and St. John's Wood Railway Bill*, 2 Clifford & Stephens, 19; *London and North-Western Railway Bill*, *Ib.* 103.) Here traffic which cannot be competitive is intended to be accommodated. The object is not to attract passengers who now go to Queenborough, but to intercept the goods traffic that goes up the Thames, and not by either railway. The traffic carried by the London, Chatham and Dover railway is purely a passenger and light goods traffic. They have no accommodation for cattle or heavy goods at Queenborough, and we are seeking to accommodate this class of traffic, although we shall, of course, carry a few passengers. Passengers would be delivered in London at different points to those of the London, Chatham and Dover railway. As to passenger steamers coming to our pier, they would probably not come from the same foreign port as those which run to Queenborough.

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed.

Agents for Petitioners, *Martin & Leslie*.

Petition of (2) THE CORPORATION OF ROCHESTER.

Railway Pier—Encroachment upon Shores of River—Corporation as Owners and Conservators—Interference with Navigation—Pendente Lite—Primâ Facie Evidence of Ownership.

A railway company proposed to construct a pier projecting over, and resting upon the shores and bed of a river. The corporation of Rochester claimed to be heard as the owners of the bed, shores, and banks of the river, and also as conservators of the navigation, which they alleged would be obstructed by the proposed works. Their title as owners was disputed by the promoters, and evidence called by direction of the Court. It was proved that the Government had treated them as owners when constructing a dock-yard within the limits of their jurisdiction, and had on more than one occasion compensated them for encroachments upon the bed of the river, although the Government were at the present time disputing their ownership, and had commenced legal proceedings to settle the question of title, which proceedings were still pending:

Held that there was sufficient *primâ facie* evidence of the ownership of the petitioners to entitle them to be heard against the encroachments upon the river bed authorised by the bill.

The *locus standi* of the petitioners was objected to, because (1) the river Medway, and the bed, soils, banks, and shores thereof between Sheerness and Hawkwood, are not the sole and exclusive property of the petitioners, as alleged in the petition; nor have the petitioners from time immemorial exercised within the said limits all acts of conservancy, management, and regulation; nor is it the fact that hitherto all works executed in or upon the said river Medway, and its banks and shores, have been executed under the sole license and authority of the petitioners, none of whose property, rights, or interests, will be affected by the bill in such a way as to entitle them to be heard.

Pember, Q.C. (for petitioners): We allege in our petition that the river Medway, and the bed, soil, banks and shores thereof, between the limits of Sheerness, at the mouth of the river, and a place called Hawkwood, situate a few miles above Rochester bridge, have from time immemorial been, and are now our sole exclusive property, and that we have for all purposes whatever the conservancy and management of the river. The promoters propose to construct a pier, jetty, and landing place, for a distance of altogether 400 yards over the bed and shores of the river, and to take compulsorily the necessary lands for that purpose. The pier will occupy one-sixth of the entire water-way of the river, to the great detriment of shipping. We claim to be heard, both as owners and conservators.

Mr. RICKARDS: Have the corporation been served with notice?

Littler, Q.C. (for promoters): As reputed owners of fisheries *ex abundanti cauteld*, but not as conservators.

Pember: We are also owners of the port of Rochester. I will call evidence to prove our title as owners of the bed and shores of the river, and as conservators.

Mr. Richard Prall [called and examined by Pember]: I am town-clerk of Rochester. The corporation are owners of the port of Rochester, and of the bed and soil of the Medway. The Admiralty took, from the corporation, the conveyance of a part of the bed and soil of the Medway, in order to enlarge the Chatham dock-yard in 1861. We have an agreement with the War office, reciting that we are the conservators of the river. We dredge and make bye-laws.

Cross-examined by Littler: The War office have paid us considerable sums for taking part of the bed and soil of the river, but are now disputing our title to them; the suit is not yet concluded.

The CHAIRMAN: Upon the evidence, we *Allow* the *locus standi* of the Corporation of Rochester.

Agent for Petitioners, *Pead*.

Petition of (3) CHAMBERLAIN AND JURY OF THE ROCHESTER OYSTER FISHERY.

Railway Pier—Injury to Oyster and Floating Fishery—Fishermen and Dredgers—Petitioners as Representatives of—Corporation as Owners and Conservators—Absence of Substantial Injury.

The chamberlain and jury of an oyster fishery petitioned against a bill authorising the construction of a pier, by a railway company, within the limits of their jurisdiction. They claimed to be heard in respect of injury to the oyster and floating fishery, as the parties on whom the management of the fisheries had been conferred by the legislature. It was, however, denied that they had any rights beyond those of the corporation, whose *locus standi*, against the bill, had been allowed on a separate petition, and who were, it was contended, the owners of the fisheries, the petitioners being only the jury of a court summoned by the corporation for the settlement of questions relating to the fisheries. The promoters also contended that no injury could be shown as likely to arise from the works proposed by the bill:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the allegation in their petition that the intended pier will be situated within the limits of the fisheries is untrue, and no property, rights or interest of the petitioners will be taken or interfered with under the bill, nor have the petitioners any such interest in the powers of the bill as to entitle them to be heard.

Pember, Q.C. (for petitioners): We allege that there has been from time immemorial an oyster and floating fishery in the Medway

and its creeks, free only to certain persons who have served an apprenticeship, and been admitted to the freedom thereof. The management and regulation of the fishery has been conferred upon us by an Act of George II., and subsequent Acts. The proposed pier will be situated within the limit of the fishery. The portion of the river where it is intended to place the proposed pier is a great taking place for various kinds of fish, and the pier will cause great injury to us. The limits of the fishery are those of the jurisdiction of the corporation of Rochester. We also allege injury to the navigation of the river, arising from the obstruction caused by the proposed pier.

Mr. RICKARDS: Will not the injury to the fishery be an injury to the corporation? Is not this the case of the corporation over again?

Pember: No; we are entitled to be heard on behalf of injury to the fishery, apart from physical injury to the bed of the river, upon which the corporation are entitled to be heard. The chamberlain and jury are the parties who would institute proceedings if the fishery was invaded. The chamberlain is appointed by the jury for a year. The mayor of Rochester, as admiral of the river, issues a precept to the water bailiff, who calls a meeting of fishermen, who elect the jury, and the jury elects a chamberlain. The corporation, through the mayor, can summon a jury, but when that is done, the executive is left entirely in the hands of the petitioners, and if any damage was done to the fishery, the compensation would not go into the pockets of the corporation, but into the pockets of the chamberlain and jury, for the benefit of the fishermen.

Littler, Q.C. (for promoters): The petition does not contain a single statement about interference with the oyster fishery. Oysters are not found at a depth such as that where the pier will be placed. As to the floating fishery, we have challenged the petitioners' right to it, and they have not given proof of it. The whole of the petition is a re-echo of the corporation petition. The administration of the fisheries is, in point of fact, in the hands of the corporation. The Act of George II., recites:—"Whereas, time out of mind, there has been an oyster fishery in the river Medway, in the county of Kent, within the jurisdiction of the mayor and citizens of the city of Rochester, and the mayor and citizens of the said city, and their predecessors have, time out of mind, yearly, and oftener upon the application of the said oyster dredgers, as occasion hath required, held a court, commonly called an Admiralty court, amongst other things, for the ordering and regulating the

said oyster fishery, and at such courts the said fishermen and dredgers constantly attend, pursuant to a summons for that purpose served on them by the principal water bailiff of the said mayor and citizens; and upon the return of a panel by the said water bailiff, of the most efficient men amongst the said dredgers, &c., the persons so returned are sworn to be the jury of the court, and the jury so sworn at such court have, time out of mind, used to make orders for regulating the said oyster fishery, &c. For defraying the expense of keeping the said courts, every dredger for oysters in the said river and creeks, did anciently pay, to the said mayor and citizens, the ancient fee of six shillings and eightpence." With regard to the property, it is clear that the whole property is in the corporation, who are the conservators of the river, and not in the fishermen. With regard to injury, even if the petitioners were entitled to be heard, they do not allege interference with the oyster fishery, which cannot possibly be interfered with, and the general floating fishery will be equally uninjured, even if they had any special rights in it.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, *Pead*.

Petition of (4) THE MEDWAY DOCKS COMPANY.

Railway Company—Pier and Landing Place—Dock Company—Competition as to Piers and Docks—Distance between Competing Docks—Traffic Description of, Accommodated—Obstruction to Navigation.

Against a bill authorising a railway company to construct a pier and landing place in connection with their railway, a dock company, who had obtained statutory powers to make docks situated on the same tidal river, but at a distance of fourteen miles from the works proposed by the bill, petitioned on the ground of competition. The promoters had not deposited plans for a dock, but the bill gave them powers to make charges for landing and shipping goods, being similar in these respects to the powers conferred upon the petitioners by their Acts, which provided for the construction of jetties and landing places in connection with their docks.

Both the petitioners and the promoters were in railway communication with the metropolis, but it was contended by the promoters that the distance rendered the alleged competition too remote, and that the traffic to be accommodated by the proposed works would be of a different kind to that which would be conveyed to the petitioners' docks:

Held, that although the bill contained no powers for the construction of a dock in the ordinary sense of the term, its powers were sufficiently similar in other respects to those of the Act under which the petitioners were incorporated to entitle the petitioners to be heard on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) their proposed docks will be situate on the Medway, at Rochester, fourteen miles from the pier or jetty proposed by the bill, which pier will not be used as a dock; (2) no such competition will result from the bill, nor will any property, rights, or interests of theirs be so affected as to entitle them to be heard.

Pead, Parliamentary agent (for petitioners): We were incorporated by the Medway Docks Act, 1866, and authorised to construct docks on the west side of the Medway, together with a railway to connect them with the London, Chatham and Dover railway, and we obtained an extension of time Act in 1879 for the construction of our works. We allege that the pier proposed by the bill will obstruct the passage of vessels in the Medway, and that the proposed pier and landing place would be in direct competition with our docks.

The CHAIRMAN: How far from the proposed pier are the Medway docks?

Pead: Fourteen miles. The promoters say that this pier or jetty is not proposed to be used as a dock, but they propose to take eighteen acres in connection with the pier. Their bill takes power to make charges for the use of the jetty and warehouses, for the safe landing and delivery of goods, animals, and minerals, for wharfage and cranage, for weighing machines, for storage of goods, &c., charges which are applicable to docks. This is really a dock scheme under the name of a pier. The promoters would compete with us in the matter of landing charges, because we have the power of making landing places, piers, quays, jetties, and so forth, and the power of making charges for

landing and shipping goods. We can accommodate vessels drawing twenty feet of water. We shall be in communication with London by means of the London, Chatham and Dover railway, as the promoters will be by means of the South-Eastern railway.

Littler, Q.C. (for promoters): We have not deposited any of the necessary plans for docks. We ask for no power to make warehouse charges, but we shall charge for goods remaining in the sheds, or on other parts of the pier for a longer time than 48 hours, and we have rates for goods shipped or unshipped at the piers. The class of vessels that would use our pier would be ocean steamers, whereas the traffic at the Medway docks would be local and coasting traffic. The services rendered at the proposed pier and the Medway docks would be of an entirely different kind.

The CHAIRMAN: The promoters are authorised to do landing work, and make landing charges at the proposed pier, in the same way as the petitioners do at their docks. We do not think the petitioners' case a very strong one, but we give them the benefit of the doubt, and *Allow their locus standi*.

Agent for Petitioners, *Pead*.

Petition of (5) STEAMSHIP OWNERS' ASSOCIATION,
INCLUDING THE GENERAL STEAM NAVIGATION
COMPANY.

5th March, 1880.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. FORSYTH, M.P.; Sir JOHN
DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-
CARTER.)

*Practice—Insufficiency of Signature to Petition—
Public Association—Secretary—Absence of
Authority of, to Sign—Allegations of Objection,
as to—Heading of Petition—Omnia rite acta.*

*Railway Company—Working Agreement with
Third Company—Absence from Bill of Powers
to Own or Hire Steam Vessels—Steamship
Owners' Association—Competition with by
Railway Company—S. O. 156 (as to Steamboat
Powers of Railway Company)—Pier and Jetty—
Construction of—Appropriation of, to Par-
ticular Classes of Traffic—Undue Preference.*

A petition of a public association was signed by the "secretary of, and on behalf of" the association, and was headed "the petition of the Steamship Owners' association." It was objected that the signature was insufficient, as the petition did not show that it was signed by the authority of the asso-

ciation, but the formal objections did not go beyond the statement that the petition contained no allegation that it was submitted to, or authorised by any meeting of the association:

Held that, in the absence of any specific allegation in the objections that the petition was not signed by the authority of the association, the Court would assume, as the heading of the petition set forth, that it was the petition of the association, and signed with proper authority, without any special allegation in the petition to that effect.

The bill authorised the construction of a short branch railway, and a pier and jetties in connection with it. The petitioners were a public association, representing owners of steamships, and complained that the bill would enable the promoters to enter into competition with them at the proposed pier, and divert their traffic, and they based their claim to be heard upon S. O. 156. The bill authorised a working agreement with a third company, for the working and use of the pier as well as the branch railway, and the petitioners alleged that this would form an additional means of competition with themselves. The bill, however, did not authorise the promoters to own or hire steam or other vessels, and the proposed working company had no powers of a similar kind. Upon this point, the Court refused a *locus standi* to the petitioners. The bill also contained a clause, enabling the promoters to appropriate the proposed pier and jetties to particular classes of traffic, and the petitioners contended that this provision was contrary to the general law and would enable the company to exercise undue prejudice towards their traffic. Against this clause the promoters, with the consent of the Court, conceded a *locus standi* to the petitioners.

The *locus standi* of the petitioners was objected to, because (1) the bill does not interfere with any of the property, rights, or privileges of the petitioners; (2) they are not entitled to be heard on the ground that they may be injuriously affected by the proposed railway and jetty, pier, or landing place; (3) the bill does

not propose to authorise the promoters or the South-Eastern railway company to run or use steam or other vessels between the jetty, pier, or landing place, proposed to be authorised by the bill, and any other pier or port, nor to acquire, or in any manner use, steam or other vessels in connection with the proposed pier; (4) the petition does not allege or show that any such competition between the petitioners and the promoters will result from the bill as to entitle them to be heard according to practice; (5) the allegation in the petition that the South-Eastern railway company would obtain a monopoly of the traffic to the prejudice of the petitioners does not entitle them to be heard; (6) the petition is only signed by "W. C. Morgan, secretary of, and on behalf of the above mentioned association," and it is not alleged that the petition was submitted to, or authorised by any meeting of the petitioners, and in the absence of any such allegation the petition, in conformity with the practice of Parliament, can only be admitted as that of the party signing it, who has no right to be heard; (7) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Pope, Q.C. (for petitioners): The General Steam Navigation company have presented a petition, but being represented by the Steamship Owners' association, do not appear to support a separate *locus standi*.

Littler, Q.C. (for promoters): The petition of the Steamship Owners' association does not state that it is signed by the authority of the association, but merely bears the signature, "W. C. Morgan, secretary of, and on behalf of the above mentioned association." That is not a sufficient signature.

Pope: The point is *res judicata* in our favour. In 1848 Sir R. Peel's committee on the *Chester and Holyhead Railway Bill* allowed our *locus standi* where the petition was similarly signed. In the *North-Eastern Railway Bill* (2 Clifford & Stephens, 147), the petition was signed by two persons as "president" and "secretary," but there was no reference either in the heading or in the body of the petition to the association. Our petition is headed as the petition of the Steamship Owners' association, and the petition declares "the power of appropriation, &c., may be used to the disadvantage of, among others, the owners of steamships forming your petitioners' association."

Littler: In the bill of 1848 the Lords subsequently reversed the decision of Sir R. Peel's committee, and disallowed the petitioners' *locus standi*. The petition ought to state that the

secretary signs by the authority of the association. As far as we are concerned, we have no knowledge of any such association. The petition does not even state that it is the result of a public meeting. The secretary might be signing on his own general authority in a matter upon which he was not in accord with the opinions of the members of the association which he claims to represent.

The CHAIRMAN: Must not it be assumed here that the secretary is acting upon proper authority? It is always assumed, unless there is something on the face of the petition to the contrary, that the petition is the petition of the persons whose petition it purports to be.

Littler: The petition of a chamber of commerce, signed only by the secretary, has been rejected as insufficient. The petition should describe who the petitioners are, and that the petition is signed by authority. (*Tees Conservancy Bill*, 2 Clifford & Stephens, 126.)

Mr. RICKARDS: In this case the secretary signs on behalf of the association, and there is the statement that the association represents shipping to the extent of upwards of £8,000,000. If the secretary had stated that he signed by the authority of the association, it would equally have stood on his assertion.

Littler: If a meeting had been held, and it was stated that the petition was resolved upon at that meeting, that would have been different. In the *Sligo Borough Improvement Bill* (1 Clifford & Stephens, 7), a resolution had been arrived at at a public meeting to oppose the bill. Here you have first the secretary representing the association, and then the association claiming to represent parties "who are owners of steamships and other vessels trading between the river Thames and Medway and various places."

The CHAIRMAN: We think the petition is quite sufficiently signed, particularly in the absence of any objection that the secretary was not authorised. The objections do not go further than stating that the petition is not the result of a public meeting. Wherever an officer purports to sign on behalf of the association, if the authority to sign is not specifically disputed in the objections, we do not assume that he has signed without authority.

Pope: As to our right to be heard against the bill, section 25 empowers the company, contrary to the provisions of the general law, to appropriate particular parts of the jetty or pier, which they are authorized to construct, to particular classes of traffic, which power would enable the company to allocate the best berth, or the whole of the berths, to the particular class of traffic which they might desire to favour. The question is, whether what is proposed by the bill is

not the same in its effect upon us as a proposal for a railway company to run steamboats. By clause 26, power is given to the company to agree with the South-eastern railway company for, among other things, the working, use, management, and maintenance of their respective railways, stations, jetties, piers, or landing places. S. O. 156 treats this as *in pari materia* with a railway company's ownership of steam-vessels.

The CHAIRMAN: The Court would not have much doubt as to what their decision would be if power was given by the bill to the promoters to build and use ships; but it is a long step to say that because it is proposed to erect a pier for your accommodation in common with other parties, the promoters may hereafter want to build ships and use them in competition with you to your detriment.

Pope: We should not enjoy equal rights at the proposed pier.

Little: We concede the petitioners a *locus standi* against clause 25 of the bill, which allows us to appropriate the pier to particular classes of traffic, because Lord Redesdale has required us to insert a provision that we shall not show undue preference to anybody.

Pope: We are also entitled to a *locus standi* against clauses 26 and 27. Clause 26 empowers the promoters to enter into an agreement for the maintenance, use, and working of the proposed railway and works, including the pier and jetties, with the South-Eastern railway, who would thus be enabled to divert the present traffic from our vessels. It is true that it is provided that the agreement is to be subject to the subsequent ratification of the railway commissioners, but that ought not to prevent our being heard against the recognition by Parliament in the first instance of the principle of such an agreement. (*Lancashire and Yorkshire Railway Bill*, 2 Clifford & Stephens, 59; *Great Western Railway Bill*, *Id.* 111.)

The CHAIRMAN: Have the South-Eastern company any power to construct or hire ships likely to use this pier?

Little: Certainly not.

The CHAIRMAN: We need not trouble you any further. We *Disallow* the *locus standi* of the Petitioners, except as against clause 25.

Agents for Bill, Hanly & Carlisle.

Agents for Petitioners, Grahames, Wardlaw, & Currey.

LANCASTER CORPORATION BILL.

Petition of FREEMEN OF THE BOROUGH OF LANCASTER.

4th March, 1880.—(Before Mr. RAIKES, Chairman of Committees, in the Chair; Mr. PEMBERTON, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Borough Improvement—Common Lands—Corporation as Trustees—Freemen as Cestui-que-Trusts—Disturbance of Rights—Common Rights under previous Acts, Alleged extinction of—Representation of Freemen as a Class—Petitioners as Individuals.

A bill for effecting various borough improvements, contained, *inter alia*, clauses affecting the rights of freemen of the borough in respect to certain marsh lands. It was promoted by the corporation as the trustees of the marsh lands under former Acts; and the petitioners were the cestui-que-trusts, and as such, entitled to receive certain annual payments out of the income derived from the marsh in lieu of rights of common extinguished under the previous Acts. They complained that the bill fixed the amount of the payments they were entitled to, without regard to the improving value of the marsh as a property, and otherwise altered their *status* at the present time. The petition was signed by a small number only of the freemen entitled to a share of the income derived from the marsh, and the promoters contended that the number of the petitioners was insufficient to represent the borough as a class.

Held, however, that it was not necessary that they should appear as representatives of a class, being personally entitled to a share of the income from the marsh lands, and that as individuals they were affected by the bill in such a manner as to entitle them to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provision for taking or interfering with any lands or property of theirs; (2) it is not the fact that the bill will deprive the petitioners

as individuals, nor otherwise than as members of a class, of any rents, or profits, rights, privileges, or franchises; (3) the freemen of the borough of Lancaster are a very numerous body, of which the petitioners form only a very small portion, and the petitioners, if they petition as a class, do not allege, or show, that they represent, nor do they, in fact, represent the freemen of the borough, or any particular class of the freemen; (4) the bill is promoted by the corporation of Lancaster, who represent for this purpose the interests of the ratepayers and inhabitants of the borough, of whom the petitioners form part; (5) they have no such right or interest, and allege no such ground of objection, as according to practice entitles them to be heard.

Clark (for himself and co-petitioners): The bill is an omnibus bill, and the opposition of the petitioners is directed to clauses dealing with what is called the Lancaster marsh. The preamble recites an Act of 36 Geo. III., entitled, "An Act for embanking, draining, and otherwise improving a certain stinted pasture called Lancaster marsh, in the County Palatine of Lancaster." In that Act it was recited that the mayor, bailiffs, and commonalty of the town of Lancaster were seised in fee of the marsh, subject to certain rights of grass, and pasturage, &c., and that it would be for the advantage of the several persons, *i.e.*, freemen of the borough, interested therein, that the marsh should be enclosed and drained, and the rents and profits to arise therefrom, paid and applied from time to time to and for the use and benefit of the several persons who were or should be interested in the said marsh; and that Act accordingly extinguished the common rights, and vested the marsh in the corporation as trustees for improving the marsh and executing the Act, and for paying the persons who, but for the Act, would have been entitled to common rights of any kind, an equivalent in money in compensation for the absorption of their rights. The Act then recites that the benefit of the marsh anciently belonged to all the freemen of the borough, but that for a period extending beyond living memory, the nett rents, profits, and income of the marsh have in each year been divided equally amongst the eighty senior freemen having certain residence and being otherwise qualified. Clauses 51, 52, and 53 of the bill alter the method of payment to the freemen, limit once for all the amount which they are to receive annually, and enact anew that, subject to the satisfaction of their claims upon it, the income derived from the marsh in its improved state shall be devoted to the good of the borough generally. The petition is signed by sixteen freemen of the borough of Lancaster,

who allege that they are entitled, either in possession or expectancy, as provided by the Marsh Act, to the nett rents and profits of the marsh, after deducting certain payments; that annexed to the right to receive a portion of such nett rents and profits are Parliamentary and other franchises, and various privileges, and they strongly object to the provisions of the bill affecting them. The eighty senior freemen, of whom we are a portion, have been served with notice of this bill as *cestui-que-trusts*. In 1864, when the corporation applied to Parliament for power to sell this marsh, twenty or thirty freemen petitioned against the bill, and no objection was raised to their *locus standi*. Although the bill proposes that we shall still receive an annual payment out of the proceeds of the marsh, we allege that the amount does not represent an adequate share of the proceeds of the marsh in its present improved condition. We do not claim as a class, but we claim as individuals. (*Northampton Corporation, &c., Bill*, 2 Clifford & Stephens, 6; *Govan Burgh Bill*, 2 Clifford & Rickards, 98.)

Littler, Q.C. (for promoters): In the *Govan Burgh Bill*, the case for the individual petitioner was not argued out, the *locus standi* being conceded. In the *Northampton* case, the petitioners were still entitled to rights of pasturage, and had therefore an interest in the realty. The petitioners have been deprived of any such rights for a long period, and have no present interest in the realty. In the *Northampton* case, there were a majority of freemen of the borough petitioning, but of the petitioners, only six or eight belong to the class of eighty senior freemen, the rest belonging to the general body of freemen of the borough, numbering over 2,000. The corporation are absolute owners in fee of the marsh, subject only to payment to the freemen as provided by the Act of Geo. III., c. 36, and an Act of 1864. None of the senior freemen have the right to receive a share of the rents and profits. As a matter of convenience the old method of selection goes on, but they are not in any sense landowners.

The CHAIRMAN: But they receive the shares for themselves individually. Parliament is now asked to alter that arrangement. The petitioners object to having a fixed limit put to the value of their shares, beyond which the proceeds of the marsh will for the future be devoted to the good of the borough generally. The *locus standi* of the Petitioners is *Allowed* against the clauses relating to the marsh lands, *viz.*, clauses 51, 52 and 53, and so much of the preamble as relates thereto.

Agents for Bill, *Tahourdins & Hargreaves*.

Agents for Petitioners, *Lewin & Gregory*.

LIVERPOOL AND BIRKENHEAD SUBWAY BILL.

Petition of THE MERSEY RAILWAY COMPANY.

14th July, 1880.—(Before Mr. PARKER, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Subway—Tunnel under River—Works under Bed of
—Authorised Railway—Rival Schemes—Com-
petition for Same Lands for both Undertakings—
Compulsory Powers Expired—Harbour Board,
Agreement with—Temporary Possession of
Lands—Easement—Leases, for Sinking Trial
Shafts only—Revival of Company—Extension
of Time—Penalties for Delay—Board of Trade
Inquiry—Provisional Cesser of Powers—
Lands Obtained after Plans Lodged—Previous
Negotiations—Former Shafts—Substituted Site,
Alleged Colourable Acquisition of—Interference
with Works—Landowners' Locus, Nature of
Interest Requisite to Support.

Against a bill for the construction of a subway beneath the river Mersey, immediately adjoining and parallel to a line of railway authorised many years previously, but not constructed, the railway company petitioned, alleging that although the subway had been so devised along its whole course as just to skirt and avoid the limits of their line, compulsory powers were, in fact, taken over a piece of land in their possession, under an agreement with the harbour board binding them under severe penalties to sink trial shafts within two years, with which shafts they were actively proceeding. In reply, it was urged that the petitioners had only been galvanized into action by the bill, that the agreement with the harbour board gave them a mere colourable interest in the lands, and that this interest was acquired after the deposit of the bill, for purposes of *locus standi*. The correspondence, however, showed that negotiations had been going on for some time, continuing earlier relations of the petitioners with the harbour board, and that the limited nature of the interest conceded to the petitioners was in accordance with the uniform practice of the harbour board:

Held, by the Court (who declined to go into the general question of the railway company's

powers or their exercise), that the petitioners had an interest in lands with which the works' clauses of the bill would interfere, and accordingly, that as landowners they were entitled to a general *locus standi*, and not merely to a clause protecting them from interference during the time which the agreement had still to run.

(*Per Cur.*) "If, at the date of petitioning, a landowner is in possession of certain land, the fact that he acquired it subsequently to the serving of notices, and the deposit of the bill, will not debar him from a *locus standi* as a landowner."

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs, and (2) none authorised to be acquired or essential for the purposes of their undertaking, were taken under the bill; (3) the compulsory powers as to lands of the petitioners had expired, and certain "notices to treat" given by them were illegal and invalid, the provisions of the Lands Clauses Consolidation Act, 1845, as to such notices, not having been complied with; (4) the mere temporary occupation of lands by them on the Birkenhead side of the river, according to the principles and practice of Parliament, did not confer a *locus standi*: the land in question belonged to the Mersey docks and harbour board, an interest in it for two years only having been acquired by the petitioners for the purpose of sinking a shaft there, subsequently to the 5th day of December, when the promoters, at their request, forwarded them a copy of the plans deposited on Nov. 80, which included these very lands; (5) the works proposed by the bill would not, in fact, interfere with the construction of the authorised railway of the petitioners; (6) no sufficient competition would be created; (7) a subway or roadway could not be converted into a railway without further Parliamentary powers; (8) no sufficient ground was alleged according to practice.

Pembroke Stephens (for petitioners): The petitioners were authorised by an Act passed in 1866 to make a pneumatic railway under the Mersey, but the undertaking was not carried out, and in 1871 the petitioners were authorised to construct an ordinary railway under the Mersey, forming connections with the different railways in Liverpool and Birkenhead. Different attempts have been made to carry out the works authorised by the Acts of 1866 and 1871, and at the present time a shaft is being sunk 17 feet in diameter, and 159 feet

which has got down to within 3 feet of the bottom, and it is expected that, in a day or two, we shall be able to commence to drive a headway under the river. By an agreement with the Duchy of Lancaster, we have obtained the right to carry our tunnel under the river, and a bill has this session passed through committees of both houses of Parliament, for extending the time for completing the railway. The promoters now come with a scheme which they call a subway, but which is, in fact, precisely similar to ours, and the works are so laid out that they could easily be converted into a railway, and their limits of deviation have been laid close to, and exactly parallel with ours.

Mr. RICKARDS: Is the subway for vehicles as well as for foot passengers?

Stephens: Yes. The proposed subway is within a foot or so of our railway, and we allege that, by the plans and sections deposited in respect of the bill, certain lands which we have contracted to purchase for the purposes of our undertaking will or may be taken compulsorily from us, and the other land now in our possession, and essential for the works now being constructed, will also be taken or injuriously interfered with.

Mr. RICKARDS: If that is correct, it is a landowner's *locus standi*; and you need not discuss any other part of the case.

Stephens: The nature of the interest which we have in the land requires explanation. The property interfered with belongs to the Mersey docks and harbour board, and the board have always objected to being ousted compulsorily from the ownership of the property, but they have said "we will bind ourselves to give you such an easement in the property as will be sufficient for your purposes."

Mr. RICKARDS: Is that a temporary easement, or a permanent easement?

Stephens: Temporary in the first instance; ultimately permanent.

Saunders (for promoters): We say altogether temporary.

Stephens: In every one of our Acts the same course has been pursued. We scheduled the land in the first instance; then the harbour board objected, but consented, as an alternative, to sell or let us the lands in question by agreement, as and when we required them for our works. In fact we had obtained from them certain lands previously, but the rock proving too hard we were obliged to abandon them, and begin again elsewhere. [Counsel read letters showing that, early in November, and before the promoters had given their notices or deposited their plans, the petitioners were in

negotiation with the harbour board as to this substituted site, though the fresh agreement with the board respecting it was not signed until some weeks later.] I do not say that we are owners of the lands, in the full sense of the word, but we have what amounts to a lease for two years, with the prospect of a permanent tenure as soon as this is justified by the condition of the works. We are bound to progress with the works to the satisfaction of the harbour board, under penalty of their putting an end to the agreement without compensation; and relying upon this tenure, and in good faith with them, we have expended £17,000 already in sinking the two shafts. In our own bill of this session, we have consented to a clause enabling the board to terminate all our powers, if, upon enquiry, they should find that we are not proceeding with due diligence. So that we are under the strongest possible inducements not only to hold these lands, but to use them without delay.

Mr. RICKARDS: The promoters appear to be taking compulsory powers affecting land over which you have contracted for an easement?

Stephens: It is more than an easement. We have for two years to come occupation of a piece of ground for the purpose of driving a headway under the Mersey.

Mr. RICKARDS: Have you had notice as lessees?

Stephens: That was not possible, for though the negotiations with the harbour board preceded the lodging of the bill, the agreement itself was not executed until afterwards. But, as long as we have a *bond fide* interest in lands, which will be defeated or taken away by the bill, that ought to be sufficient. In the *Caledonian (Tay Ferries)* case (2 Clifford & Stephens, 37), two companies were interested in lands, as tenants-at-will merely, and that was recognised as conferring a landowner's *locus standi*. In the *Burntisland Bill* (1 Clifford & Rickards, 206), a company which had not entered into possession of the lands at all, but had unexercised powers of purchase, was held to be, for *locus standi* purposes, a landowner. In the *Sutton Bridge Docks Bill* (1 Clifford & Rickards, 190), the petitioners, who were described by a member of the Court as landowners *in posse*, though not *in esse*, were similarly admitted. Our interest is certainly not less substantial than in these various instances, for if the lands are taken from us, our works must be stopped.

Saunders (in reply): I have to mention some additional facts. The petitioners' company had existed in name for 16 years, but until galvanized into life by the operations of the promoters, they had practically ceased to be. Their com-

pulsory powers of taking lands for the purposes of their undertaking expired several years ago.

Mr. RICKARDS: If they have a lease of this land, the fact that they have allowed their powers of taking other lands to lapse becomes immaterial?

The CHAIRMAN: We confined Mr. Stephens to this one point of his interest as an occupier under the agreement. We may treat him, for this purpose, as an individual having an interest in the particular piece of land, apart from the question of any general lapse of the company's powers.

Saunders: I contend that this company, who only obtained their powers from Parliament for certain definite objects, are not in the position of an ordinary individual, and should not have any favourable consideration extended to them. Having no compulsory powers to take this land, they could not acquire an easement over it.

The CHAIRMAN: They are in possession of the land now.

Saunders: It can do them no good, as their powers to acquire the remainder of the lands for their undertaking is gone.

Mr. RICKARDS: Having got this piece of land by agreement, they may see their way to procuring the remainder in like manner.

Saunders: But having had powers over certain lands, and having allowed those powers to expire, I say that we now have precedence over them, for Parliamentary purposes. It is as if they had never had the power for which we are now asking.

Mr. RICKARDS: Do you say that their agreement with the harbour board is invalid, and that they have no interest, and no title whatever in these lands?

Saunders: I go as far as that. I say that these lands were acquired, if at all, colourably, and for the purpose of giving them a *locus standi*. It was known in Liverpool early in November that we were coming for this bill, and all their proceedings were subsequent to that date.

Stephens: The correspondence shows that on the 4th of November, the money for these shafts had been subscribed; and the reply of the harbour board stipulates that a balance of rent due by the company for the former holding should be cleared off before entering on the new site, so that the transaction was continuous.

Saunders: Money can be procured when there is an object in view, and as to dates, the agreement relied on was not executed till January 1, 1890.

Stephens: We had actual possession of the land from December 6, 1879.

Mr. RICKARDS: If a landowner petitions, saying that at the time of presenting his petition, he is in possession of certain land, the fact that he acquired the land subsequently, to the serving of the notices and the deposit of the bill will not debar him from a *locus standi* as a landowner.

Saunders: Surely the mode in which the land was acquired, and the object of acquiring it, exercise a material bearing on the *locus*. Where land had been acquired colourably by one railway company, strongly desiring a *locus* against another railway company, and for the sole purpose of getting it, the fact of purchase was disregarded by the Court, and the *locus standi* refused. (*Great Southern and Western Railway Bill, 1872, Petition of Manchester, Sheffield and Lincolnshire Railway Co., 2 Clifford & Stephens, 280.*)

Stephens: In that case, the land was at one side of the Irish channel, and the petitioning railway company at the other, and they had no cross-channel powers whatever. The object might easily be inferred.

Saunders: So here. If the Court find that the land has been colourably acquired, it is in their discretion to refuse the *locus standi*.

Mr. RICKARDS: I do not think we are entitled to infer that from anything which has been shown us?

Saunders: The dates make it a case of grave suspicion. Besides, at the end of the two years, the petitioners are bound to fill in and close the shafts, and re-instate the surface to the satisfaction of the harbour board. This is certainly not an ordinary lease of land, by any means.

Mr. RICKARDS: They say they could not carry out the proposal for which they acquired it, if you obtain these powers?

Saunders: We should be willing to give them a *locus standi*, limited to the insertion of a clause, providing that we should not turn them out during their two years' occupancy. They are neither landowners, lessees, nor occupiers, in the full and ordinary sense of those words: it is hard, in fact, to define what their interest really is.

Stephens: Being an interest in land, I ask for a landowner's *locus*.

Locus Standi Allowed.

Agent for Petitioners, *Bell*.

Agents for Bill, *Martin & Leslie*.

LIVERPOOL BOROUGH EXTENSION BILL.

Petition of RATEPAYERS AND OTHERS (against Additional Provisions).

11th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; and Mr. RICKARDS.)

Municipal Borough, Extension of Boundaries—Wards of Borough, Alterations in—Ratepayers dissentient—Representation of, by Municipal Corporation—Bill, Additional Provisions in—Town Council, Minority in, Petitioning against Corporation Bill—Common Seal, doctrine of.

After the second reading of an unopposed bill promoted by the municipal corporation of Liverpool for the extension of the borough, and the annexation of the new districts to four of the existing wards, the corporation asked leave to insert additional provisions involving the rearrangement of the whole of the wards, 16 in number. The S. O. committee having sanctioned the insertion of these additional provisions, a petition against them was presented by 400 burgesses, including 20 out of a total of 48 members of the corporation itself, on the ground that they were not only new, but inconsistent with the principle of the bill as deposited. It appeared that, prior to the deposit of the bill, the scheme comprised in the additional provisions had been rejected by the corporation, but at a subsequent meeting of that body the same proposal was carried by the casting vote of the alderman presiding—the numbers being 24 on each side :

Held, that notwithstanding these facts, and the promoters' admission that the petitioners represented a substantial minority in the borough, the latter could not be heard against the common seal.

The *locus standi* of the petitioners was objected to, because (1) the petition is exclusively directed against the insertion in the bill of certain proposed additional provisions; (2) it is not alleged that those additional provisions affect, nor do they in fact affect, the lands or buildings of the petitioners; (3) the proposed

additional provisions do not, nor does the said petition allege that they do, affect the petitioners, otherwise than they affect the general body of ratepayers of the borough; (4) as ratepayers, the petitioners are not entitled to be heard against the proposed additional provisions, as those provisions are promoted by the corporation, by whom the petitioners are as ratepayers represented, and if they were not so represented, the petitioners are not entitled to be heard, either on their own behalf, or on behalf of the general body of ratepayers of the borough; (5) if any of the petitioners claim to be heard in any other character or capacity than that of ratepayers, the promoters contend that, inasmuch as the proposed additional provisions relate exclusively to the rights or privileges of ratepayers, the petitioners are not entitled to be heard in any such other character or capacity; (6) the petition does not contain any allegation which entitles the petitioners to be heard, either against the bill, or against the introduction therein of the proposed additional provisions, or any of them.

Pembroke Stephens (for petitioners): The circumstances in this case are exceedingly special. It is the case of a petition presented against additional provisions, brought up while the bill is before a committee.

Mr. RICKARDS: The S. O. committee have given their assent to the additional provisions?

Pembroke Stephens: Yes. The petition for additional provisions was presented on the 4th of this month; on the 5th, notice was given for hearing by the examiner; on the 8th, the additional provisions were before the examiner; and on the 10th, the bill was before the committee. I appear on behalf of 400 gentlemen, burgesses of Liverpool, including a number of justices, and 20 town councillors, the total number of town councillors being 48. The question raised is whether the petitioners are precluded from being heard by the ordinary doctrine of representation. The additional provisions are something new, and inconsistent with the bill as deposited. This was a bill for taking three patches of ground into the borough boundary, and adding them on to four wards, immediately adjacent to which those patches happened to be. The additional provisions begin by upsetting the scheme of the bill upon that point; they do not add the new territory to the four wards, but submit a scheme for rearranging the whole of the wards within the borough. As the bill first stood, the main body of ratepayers in the borough were left undisturbed, and merely had in those four wards additional ratepayers brought in under the

scheme of extension. The additional provisions make, in each of the 16 wards into which the borough is divided, an entirely new arrangement, and provide not for a new election, but that the gentlemen who have been elected for the 16 existing wards shall be deemed to have been elected for the 16 new wards. Thus the same representation is continued in respect of different areas and different voters. In lieu of the original provisions, clause 32a, as to division of the borough into wards, now runs as follows: "On and from the 30th day of October, 1880, the extended borough shall be divided into sixteen wards, the names or distinguishing numbers and boundaries of which shall be fixed and determined by the local government board on the report of a commissioner, to be for that purpose appointed by the said board within three weeks after the passing of this Act." Clause 32b, as to provision for existing councillors continuing to represent their former constituents, says: "The commissioner shall include in his report a recommendation as to the best mode of apportioning all the existing councillors among the new wards described in his report, so as to provide (as far as practicable) for such councillors continuing to represent as large a number as possible of their former constituents." Other new clauses provide for the publication of the commissioner's report, after which the names and boundaries of the wards, as set forth in his order, are to be the names and boundaries thereof for all purposes, "as if they had been specially set forth in this Act, and every councillor shall hold his office in the ward to which he may be assigned by such order for the same time as he would have held office if this Act had not been passed." The scheme of the bill as deposited was simply for adding three new areas to four of the existing wards, but the additional provisions constitute a municipal reform bill for the whole of Liverpool. Moreover, there is no necessity for these provisions, because under the existing public Acts there is a method of providing for a sub-division and re-arrangement of the wards which the corporation might have adopted by petitioning the Queen for an order in council, whereupon a barrister would be sent down, not appointed by a Government department, but by a Judge of Assize, who would have access to the rate books and all sources of information to enable him to make his report, and upon that report the matter could be carried out.

The CHAIRMAN: Would you have the right of being heard before him?

Pope, Q.C. (for promoters): Yes. And so they would have the right to be heard before

the commissioner to be appointed by the local government board. In this case, the bill seeks to annex territory to the borough, and something must be done with that territory when so annexed. A petition from the corporation to Her Majesty in council might be a subsequent proceeding, but a petition at this time could only be a petition relating to a readjustment of the wards within the existing borough; till the borough had these outlying districts within it, no petition to the Queen would put them within the borough. Some provision, therefore, is always necessary in an annexation bill to do something or other with the part annexed. I concede further, that if the insertion of these provisions in the original bill would have entitled the petitioners to a *locus standi* against the original bill, they would be entitled to a *locus standi* now against the additional provisions.

Pembroke Stephens: Mr. Pope does not say that the corporation would have been prevented from adopting the mode to which I have referred after the bill was passed. There was no compulsion on the corporation thus to alter the bill, and we say that these additional provisions are not something supplemental or incidental to the bill, but something inconsistent with it. Before the bill was deposited, the corporation by a vote decided that the proposal now embodied in the additional provisions should not be put into the bill, but since the deposit of the bill, the subject has been brought before the corporation again, and at a meeting at which 48 members attended, 24 voted one way, and 24 the other; and a gentleman who is not directly elected by the ratepayers whom I represent, but elected by the council—that is to say, an alderman—gave his casting vote in favour of the additional provisions.

Mr. RICKARDS: You do not deny that it was a valid decision?

Stephens: No. The question is whether you will push the doctrine of representation to such an extent as to exclude, under these circumstances, 20 members of the town council, several magistrates, and 400 burgesses, from being heard further upon the bill.

Mr. RICKARDS: Can we go behind the common seal?

Stephens: I submit that you can, under the circumstances.

Pope: If you think it is in your power to do so, I quite concede that this is a case in which you should do so, because Mr. Stephens represents a substantial minority and a large amount of opinion; but I am here as representing the common seal, and I feel bound to object to the *locus standi* of these constituents of the common seal.

The CHAIRMAN: The difficulty is that if we were to give a *locus standi* to the petitioners in this case, we might in all cases have to go into questions as to the weight of the minority, and the special circumstances of the case.

Pembroke Stephens: The doctrine of representation, though it has been recognised, is not to be found in any S. O.

Mr. RICKARDS: It is a doctrine recognised in *May's Practice*.

Pembroke Stephens: I think that before the Court of Referees was constituted, committees of the House of Commons, as committees of the House of Lords now do, used to look at the circumstances of each individual case, and exercise their judgment upon the particular circumstances. There is also a further element here. This is a claim on the part of dissenting burgesses to be heard. The corporation have not adopted the usual practice of submitting the bill to the burgesses under the Borough Funds Act. I do not say they were bound to do so; they had not to ask the burgesses for their sanction to pay the expenses out of the rates, inasmuch as they have other funds to fall back upon. Still the fact remains that the ratepayers have not had the bill before them.

Mr. RICKARDS: Are the petitioners the only petitioners against the additional provisions?

Pembroke Stephens: Yes.

The CHAIRMAN: We do not think we need hear you, Mr. Pope. It would be over-ruling all our previous decisions if we allowed the *locus standi* in this case.

Pope: I fully admit that the petitioners are gentlemen of the highest respectability; but though it is far from the wish of the Liverpool town council to prevent their being heard, the question of upholding the doctrine of the common seal seemed to be too important in a question of this sort to allow the petition to pass without objection.

Locus Standi Disallowed.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Sherwood & Co.*

LIVERPOOL TRAMWAYS BILL.

Petition of (1) LIVERPOOL SUBURBAN TRAMWAYS COMPANY (LIMITED).

31st May, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramways in Borough—Municipal Corporation and Company, Agreement between for Lease and

Working of—Tramways, connecting, outside Borough—Local Boards outside Borough—Tramway Company representing Local Boards—Breach of Faith.

In connection with the system of tramways existing in the borough of Liverpool, authority had been obtained in a previous session by certain suburban local boards to construct various lines of tramway, and it had been understood between the suburban authorities and the municipality that these tramways should be worked continuously with those inside the borough; the corporation on its part obtaining powers to construct within the borough the necessary connecting links. On the faith of such understanding, a company had been incorporated to construct and work the suburban tramways; but, though an agreement to that effect with the suburban authorities in question was described as "imminent," no such agreement was actually put forward. Meanwhile, the tramway company in Liverpool having opposed the Corporation Bill of 1879, and compelled the corporation to buy up the existing tramways before commencing to construct any lines of their own, the corporation, by the present bill, proposed to legalise the details of this purchase from the company, and also the lease to the same company of all their tramways existing or authorised. Against this bill the suburban tramway company petitioned, on the ground that the Liverpool company would thereby acquire a monopoly which would put an end to the arrangements contemplated for the continuous working of the borough and suburban lines, and would defeat the objects for which the petitioners were incorporated:

Held, that, no agreement having been actually entered into between the suburban authorities in question and the petitioners, the latter had acquired no vested interests which could be injuriously affected by the bill, and were in the position of a petitioner against a railway bill giving compulsory powers over land which he proposed to purchase.

The bill was one "for carrying into effect an agreement for the transfer by the Liverpool United Tramways and Omnibus company of their tramways in the borough of Liverpool to the corporation of Liverpool, and for the lease of those tramways to the company, and to authorise the company to construct further tramways, and for other purposes." The petitioners alleged that the bill had for its object to sanction the purchase, amalgamation, and general rearrangement of tramway interests in the borough, as now existing, or as the boundaries of the borough may be hereafter extended, and that the interests of the petitioners would be injuriously affected by the passing of the bill.

The *locus standi* of the Liverpool Suburban tramways company, limited, was objected to, because (1) it is not alleged in the petition that the bill will alter, prejudice, or affect the property, rights or interests of the petitioners; (2) they are not the owners or lessees of any tramway which will be competed with under the bill; (3 and 4) they do not show any right to be heard according to practice.

Pembroke Stephens (for petitioners): We are a company incorporated in due form, and though no tramway has yet been laid down in the suburban districts of Walton, Wavertree, and West Derby, arrangements have been made with the local boards and others, and are now pending, for the construction and working by us of tramways already authorised in the suburbs of Liverpool. This is the state of things as regards tramways in Liverpool, and outside Liverpool:—A tramway company owns the lines constructed in Liverpool; there are others authorised in the hands of the corporation of Liverpool, but not yet constructed; and there are also others authorised, and not yet constructed, outside Liverpool. The districts of Walton, Wavertree, and West Derby, in which we are interested, are districts abutting upon the boundaries of the borough, and forming part of the suburbs of Liverpool. The lines of road or street in the borough are continued into the suburbs, and form the means of access to the central and business parts of Liverpool. The inhabitants of these suburban districts are principally persons habitually resorting to Liverpool for purposes of business and pleasure, and the main roads and lines of street connecting the suburbs with Liverpool are consequently as much used, and of as great importance, as the streets in Liverpool itself. So much stress is, and has been from time to time, laid upon the close identity of interests between the borough and the suburbs, that an extension of the borough boundary has fre-

quently been suggested, and reference is even made to such a contingency in different provisions of the bill itself, and of the scheduled agreement. For many years past the question of road approaches and vehicular accommodation between Liverpool and Wavertree, Walton, and West Derby, has been regarded and treated as a whole, and, in fact, the municipal boundary for this purpose is a mere arbitrary line, the omnibuses traversing the entire distance to and fro, and the fares being regulated by the length of the route, and not with reference to the municipal limits. So well was this understood, that in the year 1868, when the Liverpool Tramways Bill, the earliest of these projects which received Parliamentary sanction, was under consideration, the tramways then proposed extended to Wavertree and other suburban districts, as well as to Liverpool; and in 1871 the company again projected lines to the suburban districts, certain terms being agreed upon with the public bodies of those districts, and embodied in the Act as it passed. Among other things provided for were maximum rates and fares, calculated with reference to the whole distance from the Liverpool Exchange to the termini of the lines respectively. Disputes, however, arose between the company and the corporation of Liverpool, which led, among other things, to notice being given by the corporation for the removal by the company of the tramways which had been laid down, the final result being that the powers of the Act of 1871 expired, and the suburban lines authorised by that Act were never, in fact, constructed by the company, the only lines which were constructed by them being tramways in the heart of Liverpool known as "the Inner Circle," with one extension in the direction of Walton-on-the-hill, and another in the direction of Toxteth-park. In 1877 an arrangement was entered into by the local boards representing the different suburban districts and the Liverpool corporation, that they should apply to Parliament for Provisional Orders, authorising lines of tramway from points in their respective districts to the Inner Circle tramways of the company; and the local boards for the districts of West Derby and Wavertree, which immediately adjoin each other's districts and the borough, made application accordingly, and obtained in the session of 1878 Provisional Orders authorising the construction of so much of the new tramway-routes as lay within their respective borders. The Liverpool corporation failed to promote in the session of 1878 their portion of the scheme, objection having been made in the council itself to a portion of the line as laid out; and the application on their part was accordingly deferred till the following

session, 1879, when, with the necessary modifications as to route, it was brought forward. In the meantime, it had become necessary for the outside local boards to memorialise the Board of Trade and to apply for and obtain from that department an extension of time for constructing their authorised lines expressly upon the ground (as stated in the memorials), that these orders had been sought in pursuance of an understanding with the corporation, that the tramways themselves were intended to connect these districts with the Liverpool exchange, pier-head, &c., and that until the corporation obtained power to make, and had actually made the connecting links between the existing Inner Circle lines, and the authorised suburban lines, it would be useless for the local boards to construct their portions of the through route. This state of things was recognised and fully admitted by the corporation in evidence and otherwise before the select committee upon their own Provisional Order of 1879. And the arrangement between the corporation and the outside boards contemplated that when those several Provisional Orders had received the Royal assent, a joint course of action should be adopted, and that the working should be uniform from end to end of the line. In view of the authorisation of these different suburban lines, and in reliance upon the evidence given before the select committees in 1878 and 1879, by the corporation witnesses and others, we have come forward to aid in the establishment of a good and effective tramway service, mainly intended for the accommodation of the suburban districts, but to be worked as part of, or in connection with the system of tramways extending into the heart of Liverpool, and enjoying facilities for freely passing and repassing along the whole line. We submit that this was the fair inference and reasonable understanding on the minds of all parties as the result of the legislation and accompanying declarations in Parliament in 1878-79, and that it would amount to a virtual breach of faith if for any reason a different construction were put upon those Provisional Orders and the acts and promises of the then promoters. Further, we contend, that looking to the engagements into which we have entered, and the nature of the obligations we have undertaken, serious loss and injury must result to us, if our rights and interests are not protected in any arrangements made in the bill now before Parliament. In the course of the proceedings in Parliament in 1879, the condition was imposed upon the corporation that before constructing the new lines of tramway authorised by the Order of that year, they should buy up the existing lines of

the tramway company within the borough, in accordance with powers to that effect contained in earlier Acts affecting the corporation, which they had neglected and not acted upon. By the outside or suburban districts, this was regarded merely as giving the corporation additional facilities or possession of the field, so that they might more freely and beneficially carry out the arrangements entered into with the suburban districts. But since the passing of the Order of 1879, the state of affairs in Liverpool as regards tramways has undergone a complete revolution, for the corporation, having purchased the existing tramways from the company, proposes to lease these very tramways, and others about to be constructed, back again to the same company. Thus we no longer find ourselves dealing, as we believed and expected, in good faith with the corporation and the different local authorities, on the basis of the declaration made so recently as 1879, but with a new and formidable company in possession of a clear monopoly, and with every inducement to push it to the utmost.

Clerk, Q.C. (for promoters) : These petitioners did not exist as a company till January in this year. The arrangements referred to in the petition were made with the local boards. The petitioners have not at present any power to construct or work a tramway anywhere in Liverpool, or within 300 miles of Liverpool.

Stephens : Last year we were an intending company ; now we are a company either with arrangements actually made with the local boards, or on the point of being completed, for the working of the tramways outside Liverpool ; and we complain that if this bill is passed behind our backs, our position will be altered.

The CHAIRMAN : You complain of something that was done before you were born. You are not standing in the shoes of people who obtained the legislation in 1879 ?

Stephens : No ; the statutory company inside Liverpool has no power whatever to work this outside district unless the bill passes ; but they will have power to do so under the bill. We have been in negotiation with the outside districts for the working of tramways upon their lines of road.

The CHAIRMAN : When did those negotiations commence ?

Stephens : They have all taken place since the incorporation of the company ; but the incorporation of the company was only the ultimate outcome of previous arrangements which were being matured but not completed.

Mr. RICKARDS : Have you made any agreements with the local boards for the transfer of the tramways to you, and for you to work them ?

Stephens: I cannot put it so high as to say that there is a sealed agreement, but negotiations have been actively going on, and are approaching the condition in which they can be sealed; and the terms will shortly be sealed and carried out in good faith, assuming this bill not to pass. I am now in a position legally to do a certain thing which will be done either now or next year.

Mr. RICKARDS: You have a capacity for contracting with certain persons with whom you have not yet contracted, and you do not wish the bill to pass because it may interfere with contracts that may be made by you hereafter?

Stephens: When you say "may be made," they are, in fact, imminent.

Mr. RICKARDS: Their being imminent implies that they do not exist.

Sir HARCOURT JOHNSTONE: Your interest is not a vested interest.

Stephens: I could not put it so high as a vested interest, but arrangements are in contemplation and on the point of being carried out, which, if put an end to by the bill, it would no longer be possible to carry out.

Mr. RICKARDS: Have you any right to object to other parties acquiring by Act of Parliament certain rights when you have not yet put yourself in a position to entitle you to say, "Do not let these parties acquire rights which may interfere with schemes I have in contemplation!"

Stephens: If put in the extremest form perhaps it might be stated in that way. This bill, however, cannot be in committee for a week, and in the course of that week an arrangement might be concluded between us and the local board. If so, would it not be hard that my *locus standi* should be refused through being here a week too soon?

Mr. RICKARDS: Your case is like that of a man who says he intends to purchase a piece of land which a railway company is proposing to take. He comes to Parliament and says, "Do not give this railway company power to take this piece of land, because I contemplate purchasing it." But nobody except the actual landowner can be heard in respect of that piece of land.

Stephens: I am in a better position than the man in the case you put. We are a body incorporated for an express purpose.

Mr. RICKARDS: You are merely a legal entity which may hereafter acquire the power of working these tramways.

Stephens: I am a legal entity on the point of acquiring the power. I cannot carry it further than that.

Mr. RICKARDS: If you have only the contem-

plation of acquiring a right, that cannot give you a *locus standi*.

Stephens: I am afraid I am here a week too soon.

Locus standi of the Liverpool Suburban Tramways Company, Limited, *Disallowed*.

Agents for Petitioners, *Lewin & Gregory*.

[*Sir Harcourt Johnstone here took the Chair.*]

Petition of (2) SHAREHOLDERS IN THE LIVERPOOL UNITED TRAMWAYS AND OMNIBUS COMPANY.

Shareholders Dissentient—S. O. 62 (as to Meetings of Proprietors to Approve of Bills)—Wharnccliffe Meeting, Dissent of Shareholders at—S. O. 132 (Dissenting Shareholders to be Heard)—S. O. 131 (In what Cases Dissenting Shareholders to be Heard)—Poll, at Wharnccliffe Meeting, not Demanded—Shareholders Dissenting from Bill, Locus Standi of—Shareholders, Non-Representation of, by Common Seal—Distinct Interest of—Lord Lichfield's Case (of 1875) Reconsidered.

Five shareholders holding 55 shares in an incorporated company, with 40,000 shares, petitioned against a bill promoted under the common seal, being dissatisfied with the terms arranged for the sale of the undertaking and its subsequent lease back again to the company. The petitioners had attended the company's meeting, called in pursuance of S. O. 62-6, and had then dissented from the bill, though they had not demanded a poll. It was now objected that they had no *locus standi* under S. O. 131-2, not having any interest distinct from that of the general body of shareholders:

Held, that, having dissented from the bill at the Wharnccliffe meeting, the petitioners were not called upon to show a distinct interest from that of other shareholders, but were entitled to a *locus standi* under S. O. 132, by virtue of such dissent.

(*Per Cur.*) S. O. 131 and 132 must be construed as giving separate grounds of *locus standi*; the one applying to persons having a distinct interest as preference shareholders, the other applying to persons who have not necessarily a distinct interest, but who attend the Wharnccliffe meeting and dis-

The *locus standi* of shareholders in the Liverpool tramways and omnibus company was objected to, because (1) the petitioners, being only five in number, and only holding 55 out of 40,000 shares of the company promoting the bill, cannot be said to represent any number, class, or body of shareholders other than themselves; (2) the bill has been duly approved by the shareholders in manner prescribed by the S. O., and should any alterations be made therein requiring further approval, the bill will have to be submitted to another meeting of shareholders for that purpose; (3) the petitioners have no interest in the company affected by the bill separate or distinct from the general interest of the company, nor are they affected otherwise than the other shareholders are affected; (4) in the absence of any such separate or distinct interest, the fact of the petitioners having dissented from the bill at the meeting of the company referred to in the petition, does not entitle them to be heard against the bill; (5) the petitioners did not demand a poll, nor was there, in fact, any poll demanded or taken at the said meeting, and the petitioners did not, therefore, dissent at that meeting in manner required by the S. O.; (6) the petitioners are not entitled to be heard as representing any other shareholders of the company nor on their own behalf; (7) they are not entitled to be heard according to practice.

Pembroke Stephens (for shareholders in the Liverpool United tramways and omnibus company): The petitioners are five shareholders in the company promoting the bill, and they complain that the capital expended by the directors on the lines sold amounts to £220,000 and upwards, while the price proposed to be taken from the corporation is £30,000 only. Part of the bargain is the grant of a proposed lease to the company for 17 years; but instead of being an arrangement profitable to the shareholders, this lease cannot be worked to any profit after making an allowance to recoup the capital lost on the sale.

Mr. RICKARDS: This is a petition under S. O. 132—the petitioners being shareholders who have dissented at a Wharnccliffe meeting. The S. O. says:—

“In case any proprietor, shareholder, or member of or in any company, association, or co-partnership shall by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of S. O. 62 to 66, or at any meeting called in pursuance of any similar S. O. of the House of Lords, such proprietor, shareholder, or member shall be permitted to be heard by the committee on the bill, on a petition presented to the House, such petition having been duly deposited in the Private Bill office.”

You are going into merits, but what question

is there for us to try? Does not the S. O. say that if a shareholder has attended the Wharnccliffe meeting and dissented, he is entitled to be heard?

Stephens: That is what I contend.

Mr. RICKARDS: According to that S. O. it would appear that we have no power to say that he should not have a *locus standi*.

Clerk, Q.C. (for promoters): I say you have.

Stephens: What my learned friend has in his mind, is a case where a bill is brought forward in the first instance, and it has been held that dissentient shareholders, claiming to be heard under the other S. O., namely, S. O. 131, must represent a class. But S. O. 132, and the S. O. therein mentioned, specially provide that after a bill has got to a certain stage, it is to go before the shareholders, at a meeting duly convened, to be considered, and that at that meeting, persons who attend and dissent—not any class of persons, not any persons that can show distinct interest, but any dissentient shareholders or their representatives who attend, and so dissent—shall have a *locus standi*.

Clerk (in reply): If you construe S. O. 132, according to the contention of the petitioners, you must give a *locus standi* to any single shareholder, or to any number of single shareholders, in a great company like the London and North-Western, who happen to have some personal objection to something that is proposed. S. O. 131 clearly limits the right to appear to a class representing a distinct interest, and it seems absurd to suppose that the meaning of S. O. 132 is not equally that persons claiming a right to appear must represent a class. In the case of the *Cleveland Extension Mineral Railway Bill* (2 Clifford & Rickards, 86) this question arose, and Mr. Bristowe said the two S. O. must be read together. In the case of the *London and North-Western Railway Bill* (1875), Lord Lichfield was an ordinary shareholder of the Wolverhampton and Walsall railway company, whose seal was required to be affixed to the bill. He attended the meeting, and dissented, but his *locus standi* was disallowed (1 Clifford & Rickards, 166), notwithstanding the fact that similar words were contained in S. O. 83 of 1875, to those contained in the existing S. O. 132.

Mr. RICKARDS: I have always construed S. O. 131 and 132 as giving separate grounds of *locus standi*, the one applying to persons having a distinct right (as preference shareholders, for instance), and the other applying to persons who have not necessarily a separate interest, but who attend the Wharnccliffe meeting and dissent.

Clerk: But in the case of Lord Lichfield, who claimed to appear under a similar S. O. to what is now 132, he was not allowed to appear.

Mr. RICKARDS: Lord Lichfield was not a proprietor in the company promoting the bill.

Clerk: No; he was a proprietor in the company who were asked to affix their seal to the bill; but that makes no difference. The words of S. O. 132 are, "In case any proprietor in any company;" it does not say in the company promoting the bill. The S. O. would apply equally to the company who were to seal the bill, and to cases where meetings of companies were called to give their assent to bills promoted by other companies; yet Lord Lichfield was not allowed a *locus standi* under it.

Mr. RICKARDS: It may be that we decided that case wrongly by proceeding on the assumption that the S. O. applied only to members of the company promoting the bill, but it does not follow that that case binds us to refuse a *locus standi* to a member of the company promoting the bill.

Clerk: If you draw a distinction between a member of the promoting company and a member of a company asked to give their assent to the bill, I have nothing further to say.

Mr. RICKARDS: I cannot come to any other conclusion upon S. O. 132, than that a dissenting member of the promoting company, whatever may be the right of a member of a company not promoting the bill, is entitled to be heard. When Mr. Bristowe, in the *Cleveland* case, says that the two S. O. are to be read together, I take it he meant that the words in S. O. 131, "where a bill is promoted by an incorporated company," apply to the following S. O.

Clerk: It has never been understood that every single shareholder who dissents at the Wharncliffe meeting has the right to appear against any bill promoted by his company, whether he has a separate interest or not.

Stephens: In the *Dublin, Wicklow and Wexford* case (2 Clifford & Stephens, 77), the whole question was fully argued.

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed.

Locus standi Allowed.

Agents for Petitioners, Lewin & Gregory.

Agents for Bill, Sherwood & Co.

LIVERPOOL UNITED GAS BILL.

Petition of (1) CORPORATION OF BOOTLE-CUM-LINACRE.

4th March, 1880.—(Before Mr. RAIKES, M.P., Chairman; Mr. PEMBERTON, M.P.; Mr. FORSYTH, M.P.; Sir J. DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gasworks—Land taken for Gas Manufacture—Limits of Gas Supply—Extension of Gasworks—Corporation of Town opposing—Past Legislation, complaint of—Health of Town Prejudiced by—300 yards Limit in Gas cases—S. O. 134, Right of Local Bodies to appear under, against Gas Bills—Nuisance from Gas Manufacture, remedy against—Public Health Act, 1875—Gasworks Clauses Act, 1847.

The Liverpool gas company, whose works were in the adjoining borough of Bootle-cum-Linacre, sought for power to extend those works and to manufacture gas on lands of theirs at Bootle-cum-Linacre not now applicable for that purpose. The municipal corporation of Bootle-cum-Linacre petitioned against the bill, resting their case mainly upon S. O. 134, which gives to the Referees a discretionary right of allowing local authorities to oppose bills injuriously affecting their respective districts. It was urged that in this case the public health would suffer from the nuisance arising from the additional gas manufacture. On the other hand it was pointed out that the complaint was really one against past legislation, and that if a nuisance were created under the bill, the Public Health Act supplied a summary remedy, not taken away by the passing of any special Act:

Held, upon these considerations, and upon the authority of previous decisions, that the *locus standi* of the petitioners must be disallowed.

The preamble of the bill recited that the demand for gas within the limits of the company (the Liverpool United Gaslight company) had, since the passing of the company's Act of 1865, increased so rapidly that it was necessary to provide further means for supplying gas, and that it was expedient that the works of the company should be enlarged and improved, and

that their limits of supply should be extended. By clause 5 it was provided that the company might, upon the lands described in the schedule to the bill, erect, alter, improve, enlarge, extend and renew works for the manufacture and storage of gas, and might thereon make, store, and supply gas.

The *locus standi* of the petitioners was objected to, because (1) no land, house, property, right, or interest of theirs will be taken or affected; (2) they are not owners, lessees, or occupiers of any dwelling-house situate within 300 yards of the lands upon which it is proposed to authorise the promoters to construct gasworks; (3) the said lands adjoin the site of the promoters' existing gasworks, and the injury, if any, which will be caused by the construction of gasworks upon such additional lands will be inappreciable, and does not entitle the petitioners, according to practice, to be heard against the bill; (4) there is no sufficient allegation in the petition that the borough of Bootle-cum-Linacre will be injuriously affected by the bill, nor will that borough in fact be injuriously affected within the meaning of S. O. 134; (5) the petitioners complain of past legislation; (6) they have no right to be heard against the proposed extension of the promoters' limits of supply; (7 and 8) the bill contains no provisions affecting the petitioners, and they have no interests entitling them to be heard.

Pembroke Stephens (for petitioners): We are the corporation and urban sanitary authority within the borough of Bootle-cum-Linacre, and, under the Public Health Act, 1875, are entrusted with the duty of attending to all matters relating to the health of the inhabitants, the lighting of streets, &c. In the manufacture of gas and residuals at the present works of the company at Bootle-cum-Linacre great nuisances have been, and are being, created, and the health of the inhabitants, especially those residing near the works, has suffered very seriously from the *effluvium*. The nuisance is aggravated by the fact that the company discharge their liquid refuse into the sewers, thereby generating foul gas which enters the houses and arises in the streets, even at a considerable distance from the works. In 1865, the promoters were authorised to take certain lands in Bootle, but were only empowered to manufacture gas upon a portion of those lands. They now ask Parliament to repeal that restriction, and propose to manufacture gas upon 14 acres of land in Bootle. The company supply gas not only in our borough, but in Liverpool, so that Bootle is to suffer all the inconvenience and injury arising from the manufacture of gas within its limits, while the rest of the company's district

will enjoy all the benefit of the supply. We claim to be heard under S. O. 134, as representing a municipality injuriously affected by the bill.

Michael, Q.C. (for promoters): This case is decided by authority. (*Newport, Mon., Gas Bill*; 2 Clifford & Rickards, 48.) Under the Gasworks Clauses Act, 1847, incorporated with our special Act, we are prohibited from carrying on our works so as to create a nuisance, and from putting anything offensive into the sewers.

Mr. RICKARDS: If the legislature by a special Act authorise the manufacture of gas on certain lands, does it not authorise the company to emit the *effluvium* necessarily caused in the manufacture of gas?

Michael: The Public Health Act, 1875, expressly says that no special exemption in any private Act shall prevail against any provision passed for the protection of the public health. With respect to *effluvium*, under the Public Health Act, a summary mode of procedure is afforded. You may go before a magistrate and stop the nuisance at once.

Mr. RICKARDS: Can gas be manufactured without producing a certain *effluvium*?

Michael: If a gas company do not use the proper means of preventing *effluvium*, a nuisance will arise; but nuisance can be prevented.

Mr. RICKARDS: The S. O. requiring notice to be served upon all people within 300 yards of the site of proposed gasworks seems to contemplate that gas-making must necessarily be carried on so as to create a nuisance?

Michael: Property in the immediate neighbourhood may be injured, but that is a private, not a public injury. The mere intention to erect gasworks in a borough, or in the district of a local authority, where the property of the local authority is not affected, does not confer a *locus standi*, which is only given to individuals having property within 300 yards. S. O. 134, under which the petitioners claim to be heard, only applies in cases in which roads are interfered with, or in like cases.

The CHAIRMAN (after deliberation): We Disallow the *locus standi* of the Petitioners.

Locus standi Disallowed.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Sharpe.*

Petition of (2) MIDLAND RAILWAY COMPANY.

8th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company, Lands of—Railway Company seeking to Acquire Gas Company's Lands—

Parliamentary Powers as to same Lands, sought by Railway and Gas Companies—Competitive Bills for Possession of same Lands—Compulsory Powers as to Land, effect of Application to Parliament for.

A gas company, whose works were at Bootle-cum-Linacre, promoted a bill authorising them to construct additional gasworks on certain land belonging to them there, but not now applicable for such a purpose. At the same time, a railway company promoted a bill in which they asked for compulsory powers over this land, for the construction of a branch line. They now petitioned against the gas company's bill, alleging that the two schemes were of a competitive character as regards this land, and that the question as to its appropriation was one which should be investigated by the committee on each bill, as in the case of competing railways seeking for compulsory powers over the same lands. The promoters replied that, having already a qualified ownership of the land, the case was not parallel with that cited, and that the issue would be properly tried by the committee on the railway company's bill alone, upon the petition of the gas company in respect of such ownership :

Held, that the railway company had no *locus standi*.

The *locus standi* of the Midland railway company was objected to, because (1) no land, house, property, right, or interest, of the petitioners will be, or can be, taken or affected under the bill ; (2) they claim to be heard solely upon the ground that by a bill which they are promoting in the present session, they are seeking power to make a railway, which is laid out to cross the piece of land upon which the promoters seek power to construct gasworks. The piece of land in question belongs to the promoters, and the petitioners have, at the present time, no powers whatever over or affecting the said piece of land. The fact that they are seeking for powers over, or affecting it, in the present session, gives them no right to be heard against the present bill ; (3 and 4) the bill does not contain any provision affecting the petitioners, and they have no such interest in its objects and provisions as entitles them to be heard.

Venables, Q.C. (for the Midland railway company) : By clause 5, powers are taken to enable the company, upon the land described in the schedule to this Act, from time to time to erect, lay down, provide, maintain, alter, improve, enlarge, extend, and renew, or discontinue works for the manufacture and storage of gas, and to make, store, and supply gas accordingly. By a bill now pending, the Midland company propose to take a piece of land now in the occupation of the gas company and their tenants, which piece of land comprises altogether 14 acres. The bill, among other objects, will authorise us to construct a line of railway from the North Liverpool railways of the Cheshire Lines committee to a station or depôt already authorised to be acquired and constructed by the Midland company, under the powers of the Midland Railway (New Works, &c.) Act, 1877. The proposed new railway is laid out to cross the piece of land upon which the gas company seek powers to construct gasworks. We do not oppose the powers thus sought by the gas company over this land, provided that due provision is made for enabling our railway to be constructed across the land in such manner as may be agreed upon between the respective engineers of the company and the petitioners, or as may, in case of differences, be settled by an impartial arbitrator. This is practically a competition for the same piece of land. Supposing the land had belonged to a third party, and both the gas company and the railway company had sought to take compulsory powers over it, there could have been no objection raised to the *locus standi* of the Midland company. It is always understood that an application to Parliament for compulsory powers to take a certain piece of land gives the party asking for those powers an inchoate right to interfere with it, so far as to confer on them a *locus standi* against others who wish to deal with the land. The gas company wish to deal with the land by applying it to purposes to which they could not apply it without the authority of Parliament. They seek, therefore, to be owners in a different sense from their present ownership, and their position differs entirely from that of an ordinary owner of land. They are owners now, with certain limited powers ; they seek to extend these powers ; and in all probability, the exercise of those powers, that is to say, the construction of works for the manufacture of gas, would prevent the construction of our railway. If we are not heard against their bill, they would be able in opposing our bill to make a very strong case, because they might say, "we have now an unopposed bill passing through Parliament, enabling us to make gas on this land ; we may,

therefore, consider these gasworks as being already made; and it is not reasonable that the Midland railway company should have compulsory power to destroy so valuable a property." Again, supposing our case for the railway was so strong that Parliament, notwithstanding that representation on the part of the gas company, gave us the power we are seeking, clearly the value of the land would have been enhanced by the passing of the gas bill, and we should have to meet a claim for a much larger compensation for land applicable to the purposes of gasworks, than we should have to meet if it was merely land in its present unoccupied state. I assume that the property in the schedule is the company's property, but they are not unqualified owners of that property; they are owners of it subject to the disability to erect gasworks on it. If they had not scheduled this land in their bill, we might have taken the land compulsorily, if Parliament granted us the power to do so, because they could not allege that our taking it prevented them from making gas, for they cannot make gas there. The moment they get their bill they can make gas there; and then, as opponents to our bill, they will say that it is interfering with land already appropriated by Parliament to the making of gas. They will contend that, their scheme having been sanctioned, we should be going counter to the decision of Parliament by applying the land to other purposes. As we say in the petition, we do not wish to prevent their taking this land with power to make gasworks on it, but we ask the committee for a clause making that right subject to the construction of our railway, it being for us, of course, to satisfy the committee that the company can make gasworks upon the part of the land which we do not occupy. Our line, in fact, would be in tunnel, and therefore, probably, we should not interfere with the gasworks; but for technical purposes it may be assumed that we do take their land. This is a case of two competing claimants for the power of using the same land. The test by which you determine whether two bills are competing is whether the objects of the two bills are, or may be, incompatible. For all the Court can tell, the erection of gasworks might be wholly incompatible with the construction of our line; and on the other hand, for all I know, the construction of our line might be incompatible with the making of the gasworks. Where parties who are only, in a qualified sense, owners of land, ask for Parliamentary powers to convert it to a certain purpose, those who are asking to convert the same land to a conflicting purpose are quite as much in the position of competitors as if the land belonged to a third

person. The accident that this land belongs to the gas company has no bearing upon the merits of the case.

Mr. FORSYTH: Can you refer us to any case that at all bears upon this?

Venables: I have looked through the books, and, to the best of my belief, there is no case like it.

Michael, Q.C. (for promoters): I do not think any case has come before the Court exactly on all fours with this. There have been one or two cases in which a railway company, having obtained power over certain land, abandoned that power, or were about to abandon it, and another company has come in asking for authority to take possession of the land so abandoned; but it does not follow as a matter of course that where two companies, each promoting a bill of its own, seeks to take the same land, a *locus standi* is, of necessity, given to both. The right of appearing in such a case is limited in two ways: first, there must be competition between the two railways, and secondly, it must be shown that the granting of the power to the one would be entirely inconsistent with the carrying out of the objects of the other. Here it does not appear that the objects of the two companies could not be carried out in each case.

Venables: Those objects may be incompatible; we should be bound to frame our clause to carry out our works so as to interfere with your gas-making to the least possible extent.

Michael: This is a piece of land in the possession of the gas company, and adjoining the works of the gas company, and therefore of special value to the gas company because Parliament is extremely unwilling to allow new pieces of land to be occupied for the manufacture of gas apart from and not adjoining to existing gasworks. By the general Act, while no manufacturing works can be made on land already belonging to the company without the sanction of Parliament, storage works—which are quite as valuable to a company—can be put up on lands acquired by the company. This fact meets the objection that the value of the land would be enhanced if we got our bill behind the petitioners' backs. But, even so, the Midland company could not be in any way damaged. When their bill went before a committee we should of course oppose it; and the whole case would be discussed upon their making out a case as to the necessity of taking the land. That is the proper way in which the question should be dealt with, instead of thrusting upon us, as promoters of our bill, not only the onus of showing that this land is suitable for the purpose for which we want it,

but of proving the negative—that the Midland company ought not to have the land for their purposes. Where two lines of railway are in competition, and they come for the same land, the bills are almost of necessity referred to the same committee, so that there no difficulty is cast upon the promoters.

Mr. RICKARDS: Suppose your bill were to be taken first, and the committee granted you these powers, you would then pre-occupy the land for your purpose, which might be incompatible with the railway company's occupation for their purpose?

Michael: They might have taken means to get both the bills referred to the same committee. When they go before the committee with their bill the whole matter will have to be discussed, and they will have to show cause why power should be given them to take this land; and it will then be for the gas company to show, either that the bill is unnecessary, or that the balance of public advantage is in favour of this piece of land being occupied by gasworks rather than by a railway. The refusal, therefore, of a *locus standi* to the petitioners now would not impose upon them any disability whatever. Then, as regards enhanced value, supposing there was no opposition whatever to our bill, and, we got the power which we seek, to erect gasworks, and in the same session of Parliament the Midland company also got power to construct their line over the same piece of ground, and supposing we put up expensive works simply with the view of making the Midland company pay for them, no arbitrator or jury would award us a penny more if we wilfully put up such expensive works in the face of the decision of Parliament.

The CHAIRMAN (after deliberation): In this case the Referees are of opinion that the *locus standi* should be *Disallowed*.

Locus standi Disallowed.

Agent for Bill, Rees.

Agents for Petitioners, Beale, Marigold, Beale & Groves.

LONDON AND NORTH-WESTERN RAILWAY BILL.

Petition of (1) MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY COMPANY, AND THE WIGAN JUNCTION RAILWAY COMPANY.

8th March, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways—Competition, Improvement of Existing, between—Traffic, Diversion of—Line, Alternative, Promoted for Relief of Existing Traffic—Collieries, Railway connected with, by Private Tramways—Railway Company seeking Access to same Coalfield.

A railway company, having access already to portions of a coalfield in the Wigan district, promoted a bill for the construction of two short branches through this coalfield, joining certain private coal tramways, connecting them with its system, and affording an alternative route in relief of the existing traffic. The bill was opposed on a joint petition by two companies, one of which alleged that its line, which was worked by the other petitioning company, and was already connected with one of these private tramways, had been designed mainly for the accommodation of this coalfield, while both complained of injury through probable diversion of traffic. The reply was that the proposed branches would only improve an existing competition:

Held, that the petitioners had a *locus standi* against the bill.

The petition alleged that the bill would authorize the promoting company to make and maintain various railways and works, and amongst them certain railways called in the bill the West Leigh branch railways, that is to say, No. 1 commencing in the township of Pennington, in the county of Lancaster, by a junction with the Bolton and Kenyon railway of the company, and terminating in the township of Abram, by a junction with the Bickershaw colliery railway. No. 2 (4 furlongs, 7 chains, and 20 links in length) commencing in the said township of Pennington by a junction with railway No. 1, and terminating in the township of West Leigh, in the same parish, by a junction

with Diggles colliery railway. By the Wigan Junction Railways Act, 1874, the petitioners, the Wigan company, were authorized to make and maintain certain railways in the county of Lancaster, between Glazebrook and Wigan, and in connection therewith, to form junctions with the railways of the Cheshire lines committee, of which the petitioners, the Sheffield company, were one of the joint owners; that the Wigan Junction was worked by the Sheffield company, who had subscribed considerable sums towards the Wigan undertaking; that the proposed railways had been specially designed with a view to enable the promoting company to obtain access to certain private railways or tramways which were now in connection with the Wigan Junction railways, and for the accommodation of the traffic on which private railways and tramways, and the collieries and works thereon, the Wigan Junction railways were, amongst other things, designed to serve, and did now serve; that the proposed railways, if constructed, would enable the company to compete with the railways of the petitioners, and divert traffic therefrom to their great prejudice and damage; that the petitioners were informed, and believed, that the company had been, and now were, in negotiation with the owners of the said private railways or tramways for the purchase thereof, with the object and intention of preventing the petitioners from using the same, and preventing them from obtaining access to the collieries and works thereon, and to divert the traffic which would otherwise pass over the railways of the petitioners, and they strongly objected thereto. That the proposed railways were in effect private branches, not intended for the accommodation of the public in general, but for the purpose only of enabling the company to obtain access to particular collieries and works, and the petitioners submitted that it is not the practice of Parliament to grant compulsory powers for the taking of lands for other than public purposes or works of public utility which, the petitioners alleged, the proposed railways were not designed or intended to be.

The *locus standi* of the joint petition of the two railway companies was objected to, because (1) the construction of the proposed railways will not enable the promoters to set up a new competition with the petitioners, who are not entitled to be heard in respect of the improvement of an existing competition; (2) no diversion of traffic can be shown as likely to arise, or if at all it is not of such a character as to entitle the petitioners to be heard; (3, 4 and 5) no property of the petitioners is proposed to be taken or interfered with, and the petition does not allege or disclose any other ground of objection which,

according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Worsley (for petitioners): The Wigan Junction line was made almost entirely to accommodate the coalfield through which it passed, and of course that coalfield could only be accommodated by spurs or small junctions from the main line into the collieries. One of the collieries so accommodated by the Wigan Junction is one through which one of these proposed West Leigh branches would be made. It will be said that the London and North-Western company have also sidings running down to that same colliery from their Eccles, Tyldesley and Wigan line, and that they are thus merely improving an existing competition. There are two answers to that. In the first place, the case made by the Wigan Junction, when they came for their line, was, that though the London and North-Western company might have a physical communication with certain collieries in this coalfield, yet owing to the complicated character of their traffic, they were not able satisfactorily to accommodate the traffic of these collieries. Another answer is that the lines in connection with these collieries communicate with the Eccles, Tyldesley and Wigan line of the London and North-Western, pointing in the direction of Manchester, while the proposed new lines would carry the traffic of the collieries on to the old Manchester and Liverpool line, by junctions pointing in the direction of Liverpool. Our junctions with these colliery lines, as authorised, point also in the direction of Liverpool, and the proposed new lines would create an entirely new competition with us, as regards Liverpool, by the North-Western company; a competition which would be so serious as to amount, in fact, to a new competition. The *Elham Valley* case (*supra*, p. 240) is on all fours with this case.

Pope, Q.C. (in reply): As to the statement that we are treating for the purchase of these private tramways, the apprehension that something wicked is going to be done in future is not a ground for *locus standi*. The London and North-Western railway could not buy these private lines, or work them, without obtaining Parliamentary powers. The Wigan Junction has no access to the Diggles railway, serving the Diggles colliery, with which our No. 2 line communicates, but it has access to the Bickershaw colliery, served by the Bickershaw colliery railway, with which our line, No. 1, communicates. As to the statement that our junctions from the colliery lines point only towards Manchester, the fact is that traffic can be taken by these junctions either to Manchester or Liverpool. The old Manchester and Liverpool line, *via* Kenyon, has long been very crowded,

but it is now being doubled, and will therefore be relieved. The Eccles, Tyldesley and Wigan line which runs into Liverpool, *via* Huyton, is becoming enormously crowded, and if these proposed lines were constructed, the coal-owner would have the option of sending traffic either by the Eccles, Tyldesley and Wigan, to Liverpool, *via* Huyton, or by the old Manchester and Liverpool by Kenyon to Liverpool, according to whether the one route or the other was crowded with traffic. At present when once the coal-wagons get into the sidings on the Eccles, Tyldesley and Wigan, they can be sent anywhere upon the London and North-Western system, so that this will not be the creation of a new competition, but simply the improving of our position in the district. We are going to relieve the Eccles, Tyldesley and Wigan line, by giving an alternative set of sidings for communication with the old Manchester and Liverpool line.

The CHAIRMAN (after deliberation): We Allow the *Locus standi* of the Petitioners.

Locus standi Allowed.

Agents for Petitioners, Wyatt, Hoskins & Hooker.

Petition of (2) FURNESS RAILWAY COMPANY.*

Railway—Steamboats—Light Dues—Allocation of to specific Harbours—Representation—Distinct Interest.

A bill promoted by a railway company owning steam-vessels proposed to grant certain exemptions and make new arrangements as to light dues upon vessels trading to and from particular ports. It was opposed by another railway company which had obtained, under a recent statute, the allocation of portion of the light dues to a particular harbour within the limits where its interests lay. The *locus standi* of the petitioners was objected to on the ground that they were represented by the harbour authorities, who collected the dues generally, and that they could not be heard in addition. It being plain, however, that the petitioning railway company had a distinct interest:

* Mr. Rickards having an interest in the Furness railway retired while the Furness *locus standi* was argued.

Held (with the assent of the promoters) that the *locus standi* must be allowed.

The *locus standi* of the Furness railway company was objected to because (1) the petition only refers to that part of the bill which relates to the exemption of certain vessels from payment of the Walney light dues, which are payable to and received by the commissioners and trustees of the port of Lancaster; although the petitioners claim to be entitled to a portion of such dues they have no control over the levying thereof, and the only persons entitled to be heard are the commissioners and trustees who have petitioned and whose *locus standi* is not objected to; according to practice the petitioners as well as the commissioners and trustees are not entitled to be heard; (2) the petitioners have no such interest in the Walney light dues or in any object of the bill as entitles them to a hearing.

Pembroke Stephens (for petitioners): The bill proposes by clause 45 to enact "that from and after the passing of this Act, and notwithstanding anything contained in the recited Acts relating to the port of Lancaster, it shall not be lawful for the commissioners and trustees of the port of Lancaster to demand, collect, receive, or take the Walney light dues, for or in respect of any ship or vessel bound or trading to or from the port of Fleetwood, from or to any place situate south or south-west of an imaginary straight line drawn from the south end of Walney island, to the south end of the Calf of Man, and it shall not be lawful for the said commissioners and trustees to demand, receive, collect, or take the rate or duty of threepence per ton referred to in section E of the said Act of the 29th year of his late majesty King George the Third, chapter 89, for or in respect of any ship or vessel which has once paid the same, until the expiration of one year from the date of such payment, and so on from time to time, and the company, and the Lancashire and Yorkshire railway company, and the said commissioners and trustees, may make and carry into effect agreements with reference to any such exemption or other matters related to or connected with the matters aforesaid, or any of them." Such provisions, if they become law, will operate injuriously to our interests, and deprive us of rights at present secured to us by Act of Parliament. The Furness company are the owners of extensive docks and works at Barrow-in-Furness, and have expended large sums of money upon them, and in maintaining, regulating, and improving the harbour of Barrow, Piel harbour and Piel channel. Owing

to these operations, the trade and commerce of Barrow have, of late years, greatly increased, and the sums received for light dues have proportionately increased. In the session of 1879, at the instance of the present petitioners, it was proved to the satisfaction of Parliament that it would be greatly to the advantage of shipping resorting to the harbour of Barrow and Piel harbour, if a portion of the money received by the commissioners and trustees of the port of Lancaster, from vessels entering or leaving those harbours, were paid over to them, and the petitioners were authorised and required to apply the same accordingly. This bill ignores any interest of the Furness company in these light dues.

Pope, Q.C. (for promoters): We do not propose to interfere with any of the dues of which the Furness company are entitled to a share, that is to say, dues payable by vessels using Barrow harbour. The promoters interfere only with the Walney light dues payable by vessels using the Fleetwood harbour.

Stephens: We are compelled to go before a committee to have the wording of clause 45 made clear, which is not so at present.

The CHAIRMAN: It seems to be a mere question of drafting. The promoters say that they do not intend to interfere with you.

Stephens: We should be content if the promoters would give us a provision making it clear that nothing in this Act is to take away, lessen, or prejudice any rights, privileges, or authorities of the Furness railway company under their Act of 1879.

Pope, Q.C.: It is always inconvenient to consent to provisos, especially where they are not necessary. The clause as it stands is perfectly plain; we do not disturb whatever relations there may be between the petitioners and the Lancaster trustees.

The CHAIRMAN: Mr. Stephens says that this Act will affect the dues to which he is entitled under the Act of last year.

Pope: We will let them have a *locus standi*, and we shall probably arrange in the meantime.

Locus standi Allowed.

Agents for Petitioners, Toogood & Ball.

Petition of (8) CLEATOR AND WORKINGTON JUNCTION RAILWAY COMPANY.

Railways, Abandonment of, Opposed by neighbouring Company—Railways to be Abandoned, withdrawal of Competing Lines on terms—Petition against Competing Lines, withdrawal

of—Agreement as to, between Railway Companies—Breach of Faith—Oral Evidence as to Alleged Understanding.

In 1877 the Whitehaven, Cleator, and Egremont railway company promoted a bill for the construction of two short curves, and at the same time the Cleator and Workington company promoted two lines, one of them competing with the scheme of the Whitehaven company. In the same session the Furness and the London and North Western railway companies proposed to vest in them jointly the Whitehaven undertaking. While these bills were pending, an agreement was come to for the withdrawal of the Cleator bill, and of the Cleator petition against the proposed curves, which were accordingly authorised by Parliament, and in 1878 the vesting Act was passed. In 1879 the vesting companies obtained authority to construct two substituted lines as being more convenient than the curves of 1877, and they now promoted a bill authorising them to abandon the latter. The proposed abandonment was opposed by the Cleator and Workington company, who alleged that they had withdrawn their own bill of 1877 and their opposition to the substituted lines of 1879 on the faith of the construction of the two curves authorised in 1877. It appeared, however, that the agreement entered into in 1877 did not refer to this alleged understanding:

Held, that oral evidence of such an understanding could not be allowed to outweigh the evidence supplied by the agreement itself, and *locus standi* of the petitioners therefore disallowed.

The petitioners, the Cleator and Workington junction railway company, alleged that the bill would authorise the North-Western company, the promoters, and the Furness company to abandon the construction of the two railways authorised by the Whitehaven, Cleator and Egremont Railway Act, 1877, and therein described; that in the session of 1877, the petitioners also promoted a bill for obtaining two new lines, one of which would have competed with the two railways aforesaid, and the petitioners

lodged petitions, praying to be heard against the bill of the Whitehaven, Cleator and Egremont railway company, and the bill for vesting in the promoters the undertaking of that company; that the two vesting companies also lodged petitions praying to be heard, by counsel, against the petitioners' bill; that terms of agreement were arranged between the Whitehaven, Cleator and Egremont railway, and Furness railway companies, the petitioners and the promoters, by which the petitioners agreed to withdraw the competitive lines so sought by them, and their petition against the two lines so sought by the Whitehaven, Cleator, and Egremont Railway company, and it was agreed that these two lines should, as soon as the sanction of Parliament was obtained, be proceeded with; that the abandonment of these two lines, now proposed, was contrary to the arrangement so come to in 1877, and would, if sanctioned, deprive the petitioners of part of the benefit of their agreement; that the two railways would, when constructed, be of advantage to the petitioners and to the public, would make a shorter route from the coast to places upon the joint line of the promoters and the Furness railway company, and to the south, and a more convenient connection between the petitioners' railway and the joint line than now existed; and the petitioners objected to the proposed abandonment.

The *locus standi* of the Cleator and Workington Junction railway company was objected to, because (1) the promoters deny that it was ever agreed, as stated in the petition, that the two lines referred to should be proceeded with as therein stated, or that the petitioners have any right, property, or interest, either in the said two lines, or in the undertaking of the Whitehaven, Cleator and Egremont railway company, which entitles them to be heard against the proposed abandonment of those lines; (2) the statement contained in the petition, as to the probable effect of the said two railways if constructed, does not entitle the petitioners to be heard; (3) the petition does not allege or disclose any ground upon which, according to the practice of Parliament, the petitioners are entitled to be heard.

Michael, Q.C. (for petitioners): In the last session, another bill was promoted, which proposed to utilise these lands for the purpose of the construction of some other works by these two companies. A petition was presented against that bill by the Cleator and Workington company; so much of the bill was struck out as authorised the using of those lands; and our petition was withdrawn.

The CHAIRMAN: Were the terms of agree-

ment mentioned in your petition reduced to writing?

Pope, Q.C. (for promoters): Yes, an agreement was drawn up.

The CHAIRMAN: The petition does not say anything about the proposed scheme of last session, or refer to anything that took place last year. It only refers to the agreement of 1877.

Michael: That is quite true.

Mr. Wm. Fletcher, M.P., for Cockermouth, was called, and stated that he took the chief part in the negotiations of 1877, on behalf of the Cleator and Workington company, when the opposition of that company was withdrawn.

Pope objected to any evidence outside the agreement, which was in writing. [*The agreement was then put in.*]

Witness: As a consequence of this agreement, our opposition was withdrawn, and the bill for the construction of the lines proposed by the Whitehaven company, was passed.

Cross-examined: Under the agreement of 1877, we got no rights to run over the Whitehaven, Cleator and Egremont line, except indirectly; but we made it part of the bargain that if the vesting bill passed, the London and North-Western company should give running powers to the Furness railway company, over the line between Egremont and our junction. Thus, it was for the Furness company to take on our traffic.

Mr. E. L. Ward, the solicitor of the petitioners, stated that in 1879 they petitioned against the bill then promoted for the construction of the substituted lines by the two companies, and withdrew that petition on a distinct statement, on the part of the petitioners, that the two lines of 1877 should be constructed. [*The witness was not cross-examined.*]

Pope (in reply): In 1877, these two little curves, now proposed to be abandoned, were proposed for the purpose of carrying traffic from the Cleator and Workington line, on to the Whitehaven, Cleator and Egremont line. They were found to be inconvenient because they created a level crossing, and therefore, in 1879, we obtained power to construct two other curves instead of them; and now we and the Furness company ask for power to abandon those authorised in 1877. The Furness company will convey the traffic of the Cleator and Workington round the new curves just as they would round the curves proposed to be abandoned.

Michael: Why did you not abandon these curves last session when you came for the substituted ones?

Pope: I cannot tell you.

The CHAIRMAN: Does the agreement of 1877 make any reference to these curves?

Pope : No.

The CHAIRMAN : We must assume, as the agreement was in writing, that it comprehended all the matters to be agreed on.

Michael : The agreement referred to the withdrawal of our bill, but the withdrawal of the petition against their bill was an entirely different matter. The terms of the withdrawal of our petition were that they should construct these lines.

Pope : The Whitehaven, Cleator and Egremont, were not to construct them for you; they were to construct them for the Furness company.

Michael : We were interested in their being constructed.

Pope : The Furness company will be at the point of junction to convey your traffic away just the same as before.

The CHAIRMAN (after deliberation) : In this case the *locus standi* is *Disallowed*.

Agents for Petitioners, *Dyson & Co.*

Petition of (4) THE MINING ASSOCIATION OF GREAT BRITAIN AND THE BRIDGWATER TRUSTEES.

Roads and Footpaths, Soil in, vested in Railway Company—Minerals under, Ownership of—Mining Association of Great Britain representing Owners of Minerals—Landowners grouped as a Class—Practice—Signatures by Chairman and Secretary—By one Trustee with power of Attorney from Co-Trustees.

A railway company sought in an omnibus bill to stop up and discontinue certain footpaths, roads, &c., and the bill provided that in the case of footpaths and roads so dealt with, if the company became the statutory owners of the lands on both sides thereof, the fee simple of such footpaths, roads, &c., should vest in them. A joint petition was presented against this provision in the bill, on the ground that it would vest in the railway company the soil of these roads, and the minerals beneath, without purchase. The petitioners were (1) the Mining Association of Great Britain, representing individual members owning minerals in the district; and (2) the Bridgwater trustees :

Held, as to (1) the mining association, that they could not represent the rights of individual members of the body in respect of private

ownership of property; and (2) as to the Bridgwater trustees, that as they did not appear to be interested as owners affected under the bill, their *locus standi* must also be disallowed.

(*Per Cur.*) A signature by the chairman or secretary, on behalf of an association, is sufficient, unless the authority to sign be challenged.

(„ „) A number of landowners cannot be grouped together and taken as a class. Each landowner speaks for himself.

The *locus standi* of the Mining association of Great Britain, and of the Bridgwater trustees was objected to, because (1) so far as the petition professes to be the petition of the "Mining Association of Great Britain," the only persons signing the same are "Thomas Knowles and Maskell William Peace," and those two persons sign the petition not on their own behalf, but respectively as "chairman of the before-mentioned meeting of the said association," and as "secretary" of the said association, and they are not entitled to be heard, either on behalf of the said Association, or of the members thereof, or any of them or on their own behalf; (2) the said Association is only a voluntary society of individuals, having no corporate character or existence, and such a body is not entitled to be heard on behalf of persons or firms alleged to be members thereof, but who have not signed the petition; (3) the petitioner, Algernon Egerton is not entitled to be heard on behalf of the trustees of the Duke of Bridgwater, and even if he were entitled to be so heard, the promoters deny that, under clause 28 of the bill, they will become the owners of the footpath referred to; (4) it is not alleged in the petition that the bill contains, nor does it contain, any provision for taking or using any lands, houses, or buildings of the persons signing, or any of them, or of the said Association, or any of the members thereof; (5) it is not alleged in the petition that the petitioners, or any of them, have the management or control of the roads or footpaths referred to, or any of them, nor have they, or any of them, such management or control, or any interest in such roads and footpaths, which entitle them to be heard; (6) there are no provisions in the bill relating to mines or minerals, or altering the provisions of the general law, or of the existing acts of the company with reference thereto, which entitle the petitioners, or any of them, or the said Association, or any of the members thereof to be heard; (7) the

petition does not contain any allegation upon which, according to the practice of Parliament, either the persons signing the petition, or the said association, or any of the members thereof, are entitled to be heard against the bill.

Milward, Q.C. (for petitioners): There is an objection to Mr. Egerton's signature. Mr. Egerton holds a power of attorney to sign for the other trustees for the Duke of Bridgwater. I understand that Mr. Pope will not insist upon that objection. As regards the objection that the petition is signed by the chairman of a meeting of the association and the secretary of the association, that has been held by this Court to be a proper mode of signing.

The CHAIRMAN: We decided in the case of the *Hundred of Hoo Railway Bill* (*supra*, p. 261) that a petition signed by the secretary on behalf of the association was sufficient, unless his authority to sign was challenged.

Mr. RICKARDS: There is more here than there was in that case, for the petition purports to be in pursuance of a resolution at a meeting of the association.

Milward: Then I will deal with the objection that the association are not entitled to be heard on behalf of the persons alleged to be members of the association. The case of the *Great Western* (2 Clifford & Rickards, 18) is directly in point. The way we are affected is this. Clause 28 of the bill says, "The site and soil of the several roads, streets, footpaths, courts, passages, thoroughfares, or highways, or portions thereof, by this Act authorised to be stopped up and discontinued, and the fee simple and inheritance thereof shall (except where by this Act otherwise provided) if any company or companies exercising the powers of this Act relative thereto are, or if and when under the powers of this Act, or of any other Act relating to such company or companies already passed, they become the owners of the lands on both sides thereof, be from the time of the stopping up thereof respectively, wholly, and absolutely vested in such company or companies." According to the ordinary legal maxim the owner of the soil has the right up to the sky and down to the lower regions, but by this 28th clause minerals under a footpath which was stopped up would become vested in the railway company. The ordinary provision as to minerals under the Railways Clauses Act is that the minerals remain in the owner of the land, and if he wants to work the minerals under the railway he must give notice to the railway company, and then they may, if they please, come in and buy the minerals. The provision in the Railways Clauses Act only applies in the case of lands

"purchased," and though that provision is incorporated, under this clause 28 the land would vest in the company by operation of law; the company would not purchase the land upon which the footpath stands, but would get it vested in them under the clause.

The CHAIRMAN: Can your association be taken to represent the owners of these minerals on a question relating to ownership?

Milward: Yes; I contend that it represents them on a question of that sort.

The CHAIRMAN: Then another question arises; are the interests of the association, and the interests of the Duke of Bridgwater's trustees, the same?

Milward: Yes, in this respect they are. The Duke of Bridgwater owns minerals under the footpaths, and the association represent mineral owners throughout the country, owning property to the value of £15,000,000.

Mr. RICKARDS: You cannot group a number of landowners together and take them as a class. Each landowner speaks for himself.

Milward: The individual members of the association are large owners of minerals.

The CHAIRMAN: We think that the Mining association is not entitled to appear on questions relating to ownership.

Locus standi of the Mining Association of Great Britain *Disallowed*.

Milward: Then I stand upon the petition as being the petition of the trustees of the Duke of Bridgwater, who are owners of minerals under one of the footpaths that will be stopped up under the bill. The petition alleges, "that the Bridgwater trustees are entitled to mines and minerals under the public footpath, in the township and parish of Runcorn, which by clause 18 of the bill, is proposed to be stopped up." The footpath runs under one of the arches of the railway.

[*The engineers on each side were examined, and explained, by reference to the plan, the proposals in the bill.*]

Mr. RICKARDS: It appears that a footpath, marked *a* to *b*, is expressly authorised to be stopped up. Then from *d* to *g*, and from *e* to *f*, are footpaths which, it is said, will become useless and inaccessible by the stopping-up of the path from *a* to *b*; but the bill does not expressly authorise the stopping-up of those paths. With regard to the path from *a* to *b*, it does not appear that the land on both sides of it belongs to the company?

Milward: No, our contention arises in respect of the consequential stopping-up of the two others.

Pope: *A* to *b* is not the property of the petitioners.

The CHAIRMAN : We Disallow the *locus standi* of the Petitioners.

Locus standi Disallowed.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Sharpe.*

Petition of (5) THOMAS BAYLEY; (6) GIBBON BAYLEY WORTHINGTON AND WILLIAM BAYLEY.

Railway—Central Station, Lands for—Rights of Way affecting—Extinction of—Private Footpath—Public Highway—Conflicting Allegations—Railway Arches—Projected Line of Street, Possible Completion of—Private Residences—Mills, Communication between—Remedy under Highways Act, Interference with—Duplicate Petitions Allowed.

A railway bill sought power to extinguish certain not very definite rights of way, affecting lands belonging to two other railway companies, with whom the promoters were acting in concert. Many years before, a line of street had been projected at this point, and the two railway companies in the construction of their lines running parallel to and at a short distance from each other, had been compelled to leave arches of sufficient width for the street to pass underneath. To the south of these railways the street was made, but not to the north, nor was it completed between the two lines of railway, where at one point a siding had been laid down upon the level. Under both sets of arches a rough track or footway ran, leading from the nearest roads on either side; and it was alleged that agreements were in existence under which, *inter alia*, the landlord of one of the petitioners could, if so minded, compel the construction of the street on the north side of the railways; but it was not at all probable, in the actual circumstances, that this power would be exercised, much of the lands in the vicinity having passed into the hands of one or other of the railway companies, who were about to construct a new central station. Two distinct petitions were presented, one claiming the right of way as a private footpath from the house of

the petitioner to his mills; whilst another petitioner, who lived in an adjoining house, treated the communication as part of the public highway, which he might be called upon to complete, and with regard to portions of which he had had transactions with one of the railway companies. The promoters contended that these claims were inconsistent, and defeated each other, and that the interest which would be extinguished was at best too shadowy and unsubstantial to be relied upon:

Held, however, that both the petitioners were entitled to be heard.

The *locus standi* of Thomas Bayley was objected to, because (1) the only portion of the bill complained of was that relating to the stopping up of a footroad; but that was a public highway, of which the petitioner had not the management or control, and he had no such interest in it as entitled him to be heard; (2) the bill contained no provision for taking or using any lands or property belonging to him; (3) there was no allegation upon which, according to practice, he could be heard.

The *locus standi* of Gibbon Bayley Worthington and William Bayley was objected to because (1) no lands, &c., of theirs, or either of them, were taken; (2) Bayley-street and the portion of the highway referred to in the petition, as about to be stopped up, were public highways; (3) even if the statements contained in the petition were accurate, they did not disclose any ground for a hearing; (4) the notice served upon one of the petitioners was merely as a matter of precaution, and not an admission of any title; (5 and 6) they had no sufficient interest according to practice.

Worsley (for Thomas Bayley): The bill recites that the London and North-Western and the Manchester, Sheffield and Lincolnshire companies have acquired lands for the purpose of a joint station at Stalybridge, and are proceeding to apply these lands accordingly; and it is expedient that all rights of way over the said lands should be extinguished. The bill contains provisions under which all rights of way, of whatever kind and degree now existing, or which are now or may hereafter be claimed to exist in or over the lands so described, shall be, and the same are thereby extinguished. The petitioner is the owner in fee and occupier of a dwelling-house and grounds known as Kelsall House, in Stalybridge, on the north of the Manchester, Sheffield and Lincolnshire and Lanca-

shire and Yorkshire lines of railway, and he is also the owner in fee and occupier of two mills known as the Bayley-street and Bridge-street mills, on the south of those lines of railway. About 100 yards from where Bayley-street crosses the river Tame there is a footroad leading from Bayley-street to Kelsall-house, which is carried under the railways of both companies by means of arches. The distance from the house to the mills by Bayley-street aforesaid and this footroad, is 300 yards, and Mr. Bayley and his predecessor have for 30 years and upwards used this footroad to get to and fro. If the powers asked for in the bill are granted and exercised, the footroad will be closed, and the petitioner will be greatly inconvenienced, as he will be compelled to pass through the town of Stalybridge, a distance of about three-quarters of a mile. The stopping up of the footroad will also decrease the value of his property, and cause him serious and unnecessary damage in other respects.

Pope, Q.C. (for promoters): The question turns upon whether the petitioner has any interest in this road, except as one of the public.

[Evidence was here given that the footpath had existed in its present condition for some 20 years, that one of the railway arches was blocked so as to admit only one passenger at a time, that a notice, "no road," was nailed on the railway arch, and that this road, such as it was, led only to the private residences of the Messrs. Bayley.]

Pope: The next petitioner seeks a *locus standi* on exactly opposite grounds, alleging this same road to be, not a footpath, but a highway. Both cannot be right, for one contention necessarily defeats the other. But if it is clear, upon the evidence, that this is a private road, and only goes to Mr. Bayley's house, I will not further contest the *locus standi* of this petitioner.

Pembroke Stephens (for Gibbon Bayley Worthington and William Bayley): Mr. Worthington is the owner, and Mr. Bayley is the occupier, of a large villa residence, known as Stamford-lodge, situate on the Lancashire side of Stalybridge, and the only convenient access from their residence to the Cheshire side of Stalybridge is by what has been called a footway, but what we assert to be a highway, which passes under the two lines of railway. This highway has always been intended to form a communication with, and continuation of, Bayley-street, and when completed it will constitute the chief approach between the Cheshire side of Stalybridge and the town of Ashton-under-Lyne, and it was in order to preserve this communication that the two com-

panies were compelled to carry their railways on arches over the highway, the full width of the intended street. The railway companies have, as it would now appear, purchased, for the purposes of their joint station at Stalybridge, the lands, or some of them, over which portion of this highway passes, and the promoters have served notice, in accordance with the S. O., on Mr. Worthington, that they propose to extinguish all rights of way over these lands, and to appropriate the site and soil and a portion of Bayley-street. The stopping-up of this highway and portion of Bayley-street will be a serious injury to the petitioners and their property, while there is really no need for doing so, as the highway and street are on the confines of the lands in question, most remote from the central station. If the company desired to stop up the footway in a legal manner, they could apply to the Court of Quarter Sessions, in which case the petitioners would be heard, as provided by the Highways Act, but by inserting this provision in the bill, they are depriving us of our statutory right. As to the objection that this is not a public highway, there is an agreement in existence with Lord Stamford, the owner of the soil, under which the petitioner is bound, when called on, to make the portion of the road now unmade. In 1847, when the Manchester, Sheffield and Lincolnshire company were buying land belonging to Mr. Bayley, they mutually covenanted with each other to leave open and unbuilt on a space sixteen yards from the Tame northwards to the railway; both Mr. Bayley and the company covenanted to lay out and form portions of Bayley-street, and at their joint expense, sewers, &c., were to be made, and the plan annexed to the deed shows the street continued up to the point where the arch crosses it. In 1853, a portion of this road was actually made and sewered at the joint expense of Mr. Bayley and the railway company. In 1860, the Manchester, Sheffield and Lincolnshire company sought power from Parliament to cross Bayley-street upon the level. Mr. Bayley petitioned, and the result of his opposition was that an arrangement was entered into between the company and Mr. Bayley, under which the company undoubtedly obtained power to lay down rails and to run across the road, but only for shunting purposes, and were not allowed to stand their trains upon the highway, and further, they came under covenant with Mr. Bayley, whenever the street was laid out and completed, to erect and maintain gates across the road, with a view to the safety of traffic.

The CHAIRMAN: Are not all these arrangements of which you have been speaking on the south side merely of one of the railways?

Stephens : Yes; but Mr. Bayley is under covenant with Lord Stamford to continue this street on the north side also when called on to do so; and this action in Parliament, and all these covenants in his favour, had in view the time when he might be called on so to complete the highway throughout.

Pope : Mr. Bayley may be bound to construct that part of the street which is on his own land; but if it be a street, he has no other right over it than the rest of the public.

Stephens : On the contrary, the distinction is clear. We have had notice from the company recognizing our individual rights; we have entered into special agreements with Lord Stamford, and from time to time with the railway company; and we are under special obligations with respect to this very street. In all these respects we differ from the ordinary public. In the *Bristol United Gas Bill* (2 Clifford & Rickards, 2) the point raised in our petition, viz., that the promoters are taking away the right which we should have possessed of being heard before the Quarter Sessions, was considered and admitted to be a valid ground of *locus standi*.

The CHAIRMAN: If by putting in a clause in the bill to stop up a footpath the right of people to go before the Quarter Sessions is taken away, it seems rather hard to say that they should not be heard.

Stephens : I am now informed that the covenants with the railway company apply in one case to a plot of land on the north side of the railway as well. The opening under the railway arches has hitherto undoubtedly been used, *de facto*, as a footpath; but all necessary legal arrangements have been made and exist for the purpose of turning it into a street, and it should be regarded in that light.

The CHAIRMAN: Do the covenants under which the street on the south side of the railway has been made, extend to the land underneath the railway arches?

Pope : Not in the sense of arrangements directly with Mr. Bayley, for he does not represent that the land under the arches belongs to him. What no doubt happened was, that the lands upon which the railway has been constructed were purchased from Lord Stamford, and at the time of construction he contemplated making a street, and accordingly bound the railway company to erect the bridges which we find there. Then he made covenants subsequently with the gentlemen owning or leasing the property on each side of the railway to complete what he had intended to be a street, and if completed, this street would certainly have passed under the railway arches. In fact, however, it has never been completed, and it is not very

likely that it will now, since, as you have heard, trains are shunted across it on the level.

Mr. FORSYTH : By stopping the road under the railway, it would be useless to make a road on the other side.

Mr. RICKARDS : Is it proposed that the railway station should take the place of this footway?

Pope : Yes.

Mr. RICKARDS : The soil of this footpath belongs to the company, subject to a right of way.

Pope : I believe that is so.

Stephens : We say that if for any purpose they stop this passage from north to south, they spoil our communication, in which we have shown a personal and individual interest.

Pope (in reply) : With the exception of the point raised about the Quarter Sessions, there is no allegation in the petition showing any different right from that belonging to any other member of the public; therefore, those who have charge of the public streets are the parties who ought to have petitioned. The petitioners might have alleged these various agreements which have been put in; they might have represented that by stopping-up the footpath, some onerous burden would be cast upon them in consequence of the arrangement existing with Lord Stamford or the railway company, but there is nothing of the kind in the petition. A petitioner has no more right to be heard because the access from his house to his mills will be interfered with, than a merchant would have the right to say "my nearest way to my office lies through a certain street that is proposed to be stopped up, and I, therefore, claim a *locus*." As regards the power of going to Quarter Sessions, this can only arise where the case is properly one for the Court of Quarter Sessions to deal with. Such applications are only made in cases where the Justices are satisfied either that the way is necessary, or that a substituted way will be provided. In this case we do not propose to contend that the way is necessary, and we cannot say that we are providing a substituted way; if, therefore, we could not have gone to Quarter Sessions, the petitioners could not have gone there either.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners in both cases is Allowed.

Agents for Thomas Bayley, *Dangerfield & Blythe*.

Agents for G. B. Worthington and William Bayley, *Dyson & Co.*

Agents for Bill, *Sherwood & Co.*

MEDWAY CONSERVANCY BILL.

Petition (1) of LONDON, CHATHAM, AND DOVER RAILWAY COMPANY.

3rd June, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Pier—Harbour—Railway Company as Owners of Pier—Railway Company, Rights of, in River—Railway Company, Dredging River and placing Buoys and Beacons—Conservancy Board over-riding existing Jurisdiction—Navigation and Vessels, Regulation of—Conflicting Jurisdictions over River and Works—Bye-laws affecting Navigation, Power to Make—Tolls on Vessels, Opposition to by Pier Owners not Owning Vessels—Harbours, Docks, and Piers Clauses Act, 1847.

A bill was promoted for the creation of a conservancy board on the Medway, abolishing existing jurisdictions, giving large powers over the navigation to the new body, giving them also the control over new buildings and works on the river bank, and imposing tolls on sea-going vessels entering and leaving the river. The Chatham and Dover railway company owned a pier at Queenborough, from which a considerable traffic was carried on with the Continent in connection with their line; and they possessed statutory powers of dredging the river within certain limits, of placing buoys and beacons, of regulating the traffic by a pier or harbour-master, and of making works on the river bank within the limits of their pier and approaches. In respect of interference with these powers they opposed the bill, and their *locus standi* was admitted as to three clauses abolishing existing jurisdictions on the Medway, and empowering the new board to make bye-laws and impose penalties. The petitioners, however, claimed to be heard generally against the creation of the new body on the ground that they would be under a new master and subject to new tolls:

Held, that they were entitled to a general *locus standi*.

The *locus standi* of the London, Chatham, and Dover railway company was objected to, because

(1) no land, house, property, right or interest of the petitioners will be or can be taken or affected under the bill; (2) the promoters admit the right of the petitioners to be heard against clauses 57, 58, and 138 of the bill, so far as they affect any rights, powers, or jurisdiction of the petitioners, or their harbour or pier-master, but as regards the other clauses and provisions of the bill, they will not be affected thereby, otherwise than in common with the rest of the public, and they have no right to be heard against such clauses and provisions; (3) as regards clause 77 of the bill, the petitioners do not allege that they are the owners or charterers of any vessels which would be liable to the tolls by the clause authorised to be taken; and the injury, if any, which the petitioners would sustain by the levy of such tolls is too remote to entitle them to be heard against the bill.

Pope, Q.C. (for petitioners): The bill proposes to establish a new conservancy board with very large powers upon the Medway. The limits within which it is proposed that those powers should be exercised, include the district of the Medway, on which the railway pier and works of the London, Chatham, and Dover railway company at Queenborough are situated; and we claim to be heard, to protect our statutory rights in respect of the pier and works. The clauses against which our *locus standi* is conceded are clauses empowering the conservators to make bye-laws, to levy penalties for infraction of bye-laws, and to abolish jurisdiction over the river, in any other parties than the proposed board of conservancy. Our rights arise under the Sittingbourne and Sheerness Railway Act, 1857, which authorised the Sittingbourne and Sheerness railway company (now the London, Chatham, and Dover railway company), to make and maintain a pier, jetty, or landing-place, with all proper works and conveniences, at Queenborough. Our Act of 1857 incorporated the Harbours, Docks, and Piers Clauses Act, 1847, which provides for the appointment of harbour-masters and pier-masters, the discharge of vessels, the protection of the pier and vessels, and with respect to buoys, lighthouses, and beacons, and to bye-laws. By section 28 of the Act of 1857, the Sittingbourne company were empowered to keep in repair the pier and works, and to do, execute, and perform all such other acts, matters, and things, in and upon the land acquired by them, and in or upon the beach or strand, and in the channel of the West Swale, as they should think proper for maintaining the pier or landing-place, and making the same fit for the reception, accommodation, and security of vessels resorting thereto, and for the more con-

Stephens: Yes; but Mr. Bayley is under covenant with Lord Stamford to continue this street on the north side also when called on to do so; and this action in Parliament, and all these covenants in his favour, had in view the time when he might be called on so to complete the highway throughout.

Pope: Mr. Bayley may be bound to construct that part of the street which is on his own land; but if it be a street, he has no other right over it than the rest of the public.

Stephens: On the contrary, the distinction is clear. We have had notice from the company recognizing our individual rights; we have entered into special agreements with Lord Stamford, and from time to time with the railway company; and we are under special obligations with respect to this very street. In all these respects we differ from the ordinary public. In the *Bristol United Gas Bill* (2 Clifford & Rickards, 2) the point raised in our petition, viz., that the promoters are taking away the right which we should have possessed of being heard before the Quarter Sessions, was considered and admitted to be a valid ground of *locus standi*.

The CHAIRMAN: If by putting in a clause in the bill to stop up a footpath the right of people to go before the Quarter Sessions is taken away, it seems rather hard to say that they should not be heard.

Stephens: I am now informed that the covenants with the railway company apply in one case to a plot of land on the north side of the railway as well. The opening under the railway arches has hitherto undoubtedly been used, *de facto*, as a footpath; but all necessary legal arrangements have been made and exist for the purpose of turning it into a street, and it should be regarded in that light.

The CHAIRMAN: Do the covenants under which the street on the south side of the railway has been made, extend to the land underneath the railway arches?

Pope: Not in the sense of arrangements directly with Mr. Bayley, for he does not represent that the land under the arches belongs to him. What no doubt happened was, that the lands upon which the railway has been constructed were purchased from Lord Stamford, and at the time of construction he contemplated making a street, and accordingly bound the railway company to erect the bridges which we find there. Then he made covenants subsequently with the gentlemen owning or leasing the property on each side of the railway to complete what he had intended to be a street, and if completed, this street would certainly have passed under the railway arches. In fact, however, it has never been completed, and it is not very

likely that it will now, since, as you have trains are shunted across it on the level.

Mr. FORSYTH: By stopping the road the railway, it would be useless to me on the other side.

Mr. RICKARDS: Is it proposed that the station should take the place of this footpath?

Pope: Yes.

Mr. RICKARDS: The soil of the footpath belongs to the company, subject to the way.

Pope: I believe that is so.

Stephens: We say that if for any stop this passage from north to south our communication, in which we have a personal and individual interest.

Pope (in reply): With the point raised about the Quarter Sessions there is no allegation in the petition of any different right from that of any other member of the public; who have charge of the public parties who ought to have petitioners might have alleged agreements which have been made, and have represented that by stopping up the path, some onerous burden was put upon them in consequence of the interference with Lord Stamford or the railway. There is nothing of the kind alleged by the petitioner has no more right to the access from his house interfered with, than a person has the right to say "my nearness lies through a certain street which has been stopped up, and I, therefore, am aggrieved." As regards the power of the Quarter Sessions, this can only be a properly one for the Court to deal with. Such applications are cases where the Justice of the Peace is satisfied that the way is necessary, and a way will be provided.

Pope: I propose to contend that the way is a substituted way; if, therefore, the way is gone to Quarter Sessions, and the petitioners have not gone there either.

The CHAIRMAN (after consulting the counsel): *Allowed.*

Agents for Thomas Bayley & Co.

Agents for G. B. Bayley, Dyson & Co.

Agents for Bill, &

venient lading and unlading of such vessels, and for facilitating the access thereto, and increasing the convenience or security of the said pier or landing-place, and for preventing mud, gravel, soil, filth, and other matters from stopping up and injuring the same. By section 31 it was also provided that the limits within which the powers of the harbour or pier-master for the regulation of the harbour or pier should be exercised should be the limits of the pier undertaking, as defined by the Act. By an Act of 1866, amalgamating the Sittingbourne and Sheerness company with the London, Chatham, and Dover railway company, we were authorised to widen and improve the Queenborough pier; and by section 18 of the London, Chatham, and Dover Railway Act, 1876, certain powers were given to us to "dredge, scour, and deepen the entrance to the West Swale from the river Medway," within the limits mentioned in this section. Section 14 of the same Act also authorised us to erect and maintain within the river Medway a beacon with lights for the purpose of lighting the entrance to the West Swale. Under these statutory powers, we have, at considerable cost, enlarged and extended the Queenborough pier, erected a beacon with lights, &c., and constructed works and conveniences by means of which an important trade is carried on with the Continent, *via* Flushing, in connection with our railway system; and we also dredge the river from time to time with a view to the improvement of the navigation. Under the bill the limits of the jurisdiction of the proposed conservancy board would include the site of our pier and that part of the river in which we have powers; and thus the authority of the board would over-ride that already given to us by Parliament. The bill (clause 65) will make it unlawful for any person "to erect, build, or make any embankment, building, or work in or upon the bed or shore of the river, or to drive any piles therein, or in the bed of the said river, without the permission of the said conservators." This provision directly conflicts with the authority given to us by section 28 of the Act of 1857. Again, by clause 78 of the bill, the conservators are authorised to provide proper approaches to each pier and landing-place (ours among the rest), and to cause such piers, &c., to be kept in good repair, and well and sufficiently lighted, watched and cleansed. Other clauses of the bill authorise the conservators to appoint harbour-masters who are to give directions for regulating the time and manner in which vessels shall enter into, go out of, or lie in the river, and the position and mooring of vessels taking or discharging cargo or ballast. These and other powers given to the

harbour-masters of the conservators would over-ride the authority of our pier-master and interfere prejudicially with the traffic at our landing-place. Surely the promoters must prove affirmatively such a case as would justify Parliament in electing a superior authority over that which Parliament has already sanctioned; but the promoters cannot prove this affirmative case without admitting the old authority to be heard upon its defence and to show that no new jurisdiction is necessary. When the promoters concede our right to be heard against the power of the conservators to make bye-laws and impose penalties, and against clause 138, abolishing existing jurisdictions, they cannot, logically, object to our right to oppose the creation of the body which is to exercise these powers, and in favour of which the present jurisdictions are to be swept away. Further, the bill proposes to levy upon vessels entering what is now a free river tolls which would be practically destructive of our trade. It is true that we are not shipowners or charterers of ships, but we have a very great interest in the ships which carry our traffic to and from the continent, and have a right to oppose any provisions which will prejudice that traffic.

Richards, Q.C. (for promoters): The petitioners can guard every interest which may be touched by the bill if they are heard against clauses 57 and 58 (powers to make bye-laws and impose penalties) and 138 (abolishing all existing jurisdictions).

The CHAIRMAN: Granting that they have some rights, can you limit the *locus standi* of the petitioners when they object altogether to the constitution of the new board of conservators?

Richards: Yes. We do not interfere with them physically; we do not take their property; and the three clauses against which we concede their right to appear are really all that affect their interests.

Mr. RICKARDS: Clause 4 defines the limits of the jurisdiction of the new board, which include the petitioners' pier. Have they not a right to be heard in order to engraft upon that clause a proviso preserving their rights?

Richards: Unless we take some of their property, they have no right to be heard generally.

Mr. RICKARDS: If your jurisdiction is to extend over that area without some restriction, you interfere with some of their powers?

Richards: At first sight it may appear so, but the exercise of the jurisdiction, so far as it may affect the petitioners, is provided for by clauses 57, 58, and 138, against which they will have a *locus standi*. As to the toll clause, they do not allege that they are owners or charterers of any vessels which will be liable to toll. They are not

owners of ships, but merely keep a pier at which certain ships arrive, and the injury they would sustain under the toll clause is, therefore, too remote to entitle them to be heard.

The CHAIRMAN: We think the London, Chatham, and Dover Railway Company are entitled to a general *locus standi*.

Locus standi Allowed.

Agents for London, Chatham, and Dover Railway Company, *Martin & Leslie*.

Petition of (2) THE SHEERNESS PIER COMMISSIONERS.

7th June 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, Bart., M.P., Mr. HINDE PALMER, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Practice—Signature to Petition, sufficiency of—Pier Commissioners, Clerk to, signing by order of—Quorum of Commissioners, authority to Petition given by—Petition to Parliament, included in Clerk's Authority to Sue and be Sued, &c.

The special Act constituting a body of pier commissioners at Sheerness authorised the clerk to sue and be sued, in the name of the commissioners, and generally to represent the body in proceedings instituted by or against them. It was contended by promoters of a bill affecting the pier that this statutory right of representation did not apply to proceedings in Parliament, and that therefore a petition against the bill, purporting to be the petition of the commissioners, and signed by their clerk "by order of the Sheerness pier commissioners, at a duly convened meeting, held on the 8th day of June, 1880," was informal, and the signature insufficient. The power of representation given to the clerk under the special Act was not set forth or mentioned in the petition, but the promoters did not dispute the statement that the clerk had been authorised to sign the petition against the bill, at a meeting duly convened and attended by a quorum of the commissioners: Held, that the petition was sufficiently signed, and *locus standi* allowed.

In the course of argument, counsel for the promoters admitted that, as to merits, the case was not distinguishable from that of the London, Chatham, and Dover railway company; but the following objections were taken upon the sufficiency of the signature to the petition:—(1) the petition is not signed, as it should have been, by a quorum of the said commissioners; and (2) the petition is signed only by the clerk to the commissioners, and such signature is not sufficient, even although the said clerk may have signed the petition by order of the commissioners at a meeting duly convened.

Soutar, Parliamentary agent (for petitioners): The 10 Geo. IV., being the special Act constituting the Sheerness pier commissioners, provides (section 21) that the commissioners may sue and be sued in the name of their clerk or clerks for the time being, or in the name of any one of the commissioners, and that all actions and suits for the recovery of any penalty, and so on, or any matter or thing relating to this Act, may be brought in the name of their clerk or clerks, or in the name of one of the commissioners.

Mr RICKARDS: You say that applies to a petition to Parliament?

Soutar: Yes. Then it is also provided that all orders and determinations of the said commissioners in the execution of the Act shall be made at a meeting to be held in pursuance thereof, and not otherwise; and all acts, orders, and proceedings relating to the execution of this Act hereby directed, and so on, and all the powers and authorities hereby in them vested, shall be done and executed by the major part of the commissioners present at the respective meetings to be held in pursuance of this Act (the quorum being five); and all acts, orders or proceedings then made or done by or before such commissioners shall have the same force and effect, and so on, as if the said orders, &c., were or had been made by or before all the said commissioners. I can prove that a meeting was held at which there was a quorum of five and at which an order was made that the clerk should sign this petition and present it.

Richards, Q.C. (in reply): I do not dispute those facts, but contend that, according to the practice of Parliament, this petition is not properly signed. (*East Somerset Railway Bill*, May's Parliamentary Practice, 8th ed., 780; *Thames and Severn Navigation Bill*, 1866, *Petition of Thames and Isis Navigation*, Smeth. 96; *Birmingham Waterworks Bill*, 1866, *Ib.* 97.)

The CHAIRMAN: Does not the case rest on the wording of the Act governing the proceedings of the particular body?

Richards : In this case the Act certainly gives the commissioners a right of appearing by their clerk, but this right applies only to actions and suits, and does not refer to petitions to Parliament. The mere signature of the clerk in such a case is not sufficient.

Soutar : In the *Uppingham Water Bill* (1 Clifford & Rickards, 272), it was held that a petition of poor law guardians was properly signed by the chairman, a resolution having been come to at a meeting directing the chairman to sign. There is nothing in the Act directing that the five commissioners constituting the quorum shall sign documents. The Act provides, on the contrary, that the clerk shall sign documents and shall sue and be sued.

Richards : The petition ought to state that the clerk is authorised to sign for the commissioners. In the case of the *Swansea Harbour Bill*, 1874 (1 Clifford & Rickards, 117), it was held to be not sufficient that the chairman of a public body should subscribe himself as chairman of that body, but that it was necessary that the petition should say on the face of it that he had authority to sign on their behalf. Here the clerk nowhere states that the Sheerness pier commissioners had authorised him to sign the petition. He ought to show his right to be heard within the four corners of the petition.

The CHAIRMAN : Do you contend that it is necessary that the Act of Parliament authorising the clerk to act for the commissioners should be recited in the petition ?

Mr. RICKARDS : I find that the petition says "signed, by order of the commissioners, at a duly convened meeting."

The CHAIRMAN : And the petition purports to be the petition of the commissioners. We are of opinion that the petition is sufficiently signed.

Locus standi Allowed.

Agents for Sheerness Pier Commissioners,
Durnford & Co.

Agent for Bill, *Rees.*

METROPOLITAN AND METROPOLITAN DISTRICT RAILWAYS (CITY LINES AND EXTENSIONS) BILL.

Petition of NORTH METROPOLITAN TRAMWAYS
COMPANY.

23rd June, 1880.—(Before Mr. PARKER, M.P.,
Chairman; Mr. RICKARDS; and Mr. BONHAM-
CARTER.)

*Railways—City Lines, Order of Completing—
Purchase of Lands, Shortening of Time for—*

*Underground Works—Tramways—Protective
Clauses, how far Affected.*

In the previous session, 1879, two railway companies obtained power to make (1) a railway connecting their existing systems and completing the Inner Circle of railways in the metropolis, and (2) a railway at right angles with this new line, running underneath an important thoroughfare in which tramways were already laid. By the Act of 1879, the companies were bound to make and open railway No. 1 before railway No. 2 was completed, and none of the lands required for No. 2 were to be purchased until the whole of those for No. 1 had been obtained. The bill sought to do away with the restriction thus imposed so far as the purchase of lands was concerned. The tramway company petitioned on the ground that railway No. 1 would benefit while railway No. 2 would injure them, and that the construction of railway No. 2 would be accelerated under the bill :

Held (apparently on the ground that the restriction in the Act of 1879 had not been inserted specially for the tramway company, while clauses inserted for their protection were untouched), that there was no sufficient change of status to entitle them to be heard.

The *locus standi* of the petitioners was objected to, because (1) the promoters were not empowered to take any lands, or interfere with any tramways, &c., of the petitioners, or in any way to alter their status as fixed by the Act of 1879 ; (2) section 6 of that Act was not inserted for their protection, and the only effect of the bill could be to delay interference with the streets traversed by their tramways ; (3) they would not be prejudiced in any way ; and (4) they had no claim according to practice.

Pembroke Stephens (for petitioners) : The Act of 1879 authorised the construction of two railways, one (No. 1) connecting the Metropolitan and District systems, and the other running out of this new railway at right angles, and to be constructed under High-street, Whitechapel, and the Whitechapel-road. The Act of 1879 required that both ends of railway No. 1 should be commenced simultaneously ; that no part of the land required for the Whitechapel line

should be purchased till all the land required for railway No. 1 had been obtained; and that no part of the Whitechapel line should be completed or opened until Railway No. 1 had first been opened for traffic. Clause 9 of the bill proposes to do away with the restriction upon commencing the Whitechapel line until the land required for railway No. 1 has been obtained. This change affects the tramways in two ways. As long as the railway companies are compelled to make both the lines of 1879, the great cost may deter them from making either. Again, the completion in the first instance of the Inner Circle would bring additional traffic to the foot of High-street, Whitechapel, where our tramways begin, and thus we should be compensated to some extent for the ultimate disturbance of the surface in High-street itself. But this bill might let them dig up High-street first. The promoters now talk of striking out clause 9. If so, we ought to have a *locus* to see that this is done.

Worsley (for promoters): We do not undertake to strike it out, but it is probable that it will disappear.

Mr. RICKARDS: Do the petitioners contend that section 6 was inserted in the Act of 1879 for their protection?

Stephens: Not specially for us, but as part of the general settlement, to which we attached great importance. This will be a disturbance of the status of 1879, and we ought to be heard before the promoters are released from their engagements under statute. (*Tipton Local Board Bill, 1879, 2 Clifford & Rickards, 228.*) Such an alteration, if made between one House of Parliament and the other, or by way of additional provision, would surely entitle us to be heard.

Worsley (in reply): In the case just cited, an express provision had been inserted for the protection of the petitioners, and it was proposed to repeal a portion of that proviso. In this case, the condition was not inserted for the tramway company specially, but on the contrary, at the instance of public bodies, whose interest lay in the city and who did not care whether the Whitechapel line was made or not. The only interest the tramways have in the Whitechapel route, is to guard themselves against injury in the construction of the railway works. Clauses on that head were inserted in last year's Act, and are untouched by this bill. As to any supposed acceleration of the works, we could, under our existing powers, serve notice for the whole of the land required for railway No. 1 to-day, and begin the Whitechapel line the day after.

Mr. RICKARDS: But if this bill passes, you can

defer giving the notices in respect of railway No. 1, and can at once proceed with the Whitechapel branch?

Worsley: Yes: the utmost the bill does, is to alter the date at which we may possibly interfere with the Whitechapel-road. If it were an extension of time bill, the petitioners could not be heard. Can they be heard against a shortening of time bill?

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, *Godfray*.

Agents for Bill, *Sherwood & Co.*

METROPOLITAN DISTRICT RAILWAY BILL.

Petition of THE GREAT WESTERN RAILWAY COMPANY.

9th June, 1880.—(Before *Mr. PEMBERTON, M.P., Chairman; and Mr. RICKARDS.*)

Competition, between Railways — Metropolitan Railway Traffic, Competition for—Distinction between, and other cases of Railway Competition—Practice—Quorum of Referees—Hearing before two Referees, by consent.

The Metropolitan District railway company, already possessing railway communication between Acton and London, promoted a bill to extend their system from Ealing to Uxbridge. The Great Western company, whose line ran from Acton to Uxbridge, opposed the bill on the ground of competition between Ealing and Uxbridge, and also between Uxbridge and the metropolis. Their *locus standi* was objected to because, as regards traffic between Acton and London, the competition was already sanctioned, and also upon the general ground that railways which would afford outlets for the vast and increasing traffic between London and the immediate neighbourhood, stood on a different footing from railways elsewhere:

Held, that the Great Western railway company had a *locus standi*.

According to practice, the Referees' Court consists of a quorum of three members; but

by consent of the parties the present case was heard and decided by two members, including the Speaker's Counsel.

The bill was one to enable the promoters to construct a railway commencing at the termination of the line of the Metropolitan District company at Ealing, and terminating at Uxbridge, side by side with the Great Western station there. The Great Western railway company asked to be heard against the bill on the ground that the proposed railway would be in direct competition with their line from Paddington, *via* Acton and West Drayton, to Uxbridge.

The *locus standi* of the Great Western railway company was objected to, because (1) the petition is founded throughout upon competition. The promoters, without admitting or denying the statements of fact in the petition, and without contesting that the railway proposed by the bill will compete with the Great Western company for the conveyance of traffic between Ealing and Uxbridge, submit that this is not a case on which the petitioners ought to be heard on the ground of competition; (2) the railway proposed by the bill will serve districts not traversed, or not conveniently served, by the Great Western railway, and the promoters submit that the right to be heard against bills for authorising the construction in the immediate neighbourhood of London of railways which will afford outlets for its vast and increasing population, stands on a very different footing from the claim of railway companies to be heard for protection from competition of railways constructed by them through unremunerative districts with a specific view to the traffic of some particular town; (3) even from this competition railway companies have very rarely been protected, and the discussions have involved to both parties vast expense. The promoters respectfully hope that the Referees will not think fit in this case to admit the petitioners to be heard upon the ground of competition; (4) although the petition makes certain objections to the details of the bill, it does not allege or disclose any right or interest, or any ground of objection other than competition, which, according to the practice of Parliament, entitles the petitioners to be heard.

Saunders (for petitioners): Three years ago the Metropolitan company obtained powers to construct a line terminating at Ealing, passing under the Great Western line, and ending with a station on the north side of the Great Western at Ealing. This line was evidently promoted with the view of being continued further. When it was brought before Parliament land was

taken not only for a station at Ealing, but also for the purpose of effecting a junction with the Great Western. But though the Metropolitan District company had made their line of railway to Ealing, and though at one time they showed some signs of negotiation with the Great Western company for the purpose of making that junction, they have never made it. The Metropolitan District at present runs from Ealing to the Mansion House in competition with the Great Western. The proposed line will be an extension of that competition to Uxbridge, a competition of the most aggravated character. First, as regards local traffic between Uxbridge and Acton, the two lines run very near together in some places, and there can be no question about the direct competition there. Secondly, as regards competition between Uxbridge and London, the Great Western company have four means of communication with Metropolitan stations, (1) by through trains along the Metropolitan line to Moorgate-street, with our own engines and carriages; (2) to the Mansion House by Addison-road, passengers changing at Addison-road into the Metropolitan District; (3) by Addison-road to Victoria-street, where passengers can change again into the Metropolitan District; and (4) by Westbourne-park, passengers changing into the Metropolitan and proceeding by the Metropolitan District to the Mansion House *via* Addison-road. By the proposed line, the distance from Uxbridge to Victoria station would be 16 miles, and from Uxbridge to the City 19½ miles. By our line from Uxbridge to Moorgate-street the distance would be 20½ miles, and to the Mansion House by Westbourne-park, changing there, the distance would be 22 miles. The promoters object that this is a case of competition for metropolitan traffic, and is not, therefore, to be governed by the rules ordinarily applicable to cases of competition. But, in the following cases, where the *locus standi* of opposing companies was allowed, the traffic in question was metropolitan:—*Hounslow and Metropolitan Railway Bill, Petition of London and South-Western Railway Company* (2 Clifford & Rickards, 106); *Pinner Railway Bill, Petition of London and North-Western Railway Company* (*Ib.*, 214). As the proposed line goes from Ealing station without touching the Great Western line, we are deprived of our *locus standi* as landowners.

Pope, Q.C. (for promoters): Where a company is merely opening up in the suburbs of London a new district at present unaccommodated, the circumstance that there is a line within a mile, or a mile and a half, does not constitute such a competition as entitles the owners of that line to be heard. Of course, we

cannot deny that there is competition between Uxbridge and Acton, but as between Acton and the Mansion House that competition has been already sanctioned. The line between Uxbridge and Acton passes through a totally unaccommodated piece of residential country.

The CHAIRMAN: We think the Great Western company are entitled to a *locus standi*.

Locus standi Allowed.

Agent for Petitioners, Mains.

Agents for Bill, Dyson & Co.

MIDLAND RAILWAY BILL.

Petition of (1) THE GREAT WESTERN RAILWAY COMPANY.

8th March, 1880. — (Before Mr. PEMBERTON, M.P., Chairman; Mr. FORSYTH, M.P.; Mr. RICKARDS, and Mr. BONHAM-CARTER.)

Railways—Competition, Improvement of existing—Construction of more Central Terminus—Recommendations of Parliamentary Committee upon former Bill, Non-compliance with.

A railway bill contained a clause authorising the company to construct a small branch line from their existing railway into a town, within a short distance of which their railway already ran. It was contended by the petitioners, whose railway ran into the town in question, that the branch line authorised by the bill would bring the promoters into direct and advantageous competition with their railway, and deprive them of an important coal traffic.

An additional ground of *locus standi* urged by the petitioners was, that the bill was not in accordance with the recommendations of a Parliamentary committee upon a previous bill for the construction of a similar branch line, but the conditions of the two bills did not appear to be sufficiently analogous to entitle the petitioners to go before a committee to be heard in support of their case, and the Court also disallowed the *locus standi* of the petitioners on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) no lands, buildings,

stations, or other property of theirs can be taken or used under the provisions of the bill; (2) the construction of the intended Stroud branch and road referred to in the petition will not create any new or materially alter any existing competition; (3) the bill does not contain any provision relating to or affecting the Stonehouse and Nailsworth railway, or any estate, right, or title which the petitioners have therein, and the petition discloses no ground for a hearing in relation to that railway; (4) the petition does not allege, nor is it the fact, that the petitioners ever possessed the powers or became subject to the obligations of the Stonehouse and Nailsworth company, with reference to the construction and use of the railways referred to in paragraphs 7 to 14 of the petition; (5) they have no such interest in the Stroud branch as entitles them to be heard either on their own behalf or on behalf of manufacturers or other persons as stated in the petition; (6 and 7) the petition does not state in what respect the promotion of the bill is contrary to the spirit and intention of the agreement referred to in allegation 18 of the petition, and there is nothing in that agreement which entitles them to be heard, nor does their petition show any such interest in the objects of the bill as entitles the petitioners to be heard.

Pope, Q.C. (for petitioners): The Great Western company seek to be heard, on the ground of competition, in respect of the powers taken by the bill to construct a small branch, a mile and five furlongs in length, running out of the Midland company's Stonehouse and Nailsworth railway and terminating in Stroud, an important manufacturing centre. Stroud derives its supply of coal at present from the Forest of Dean. This supply is conveyed *via* Lydney and Gloucester by the Great Western company, who have the monopoly of the coal traffic, as at present the Midland do not come on their Stonehouse and Nailsworth branch nearer than 1 mile and 5 furlongs to Stroud, which involves carting to an extent practically excluding Midland coal. Under what is proposed by the bill, the Midland company would get the coal from Lydney across the Severn bridge (across which they have running powers), and then by their own line to Sharpness docks and so to Stroud and its environs, which would be a shorter route than the Great Western railway has now. Our case is strengthened by the fact that the Stonehouse and Nailsworth line, which was authorised in the hands of an independent company in 1865, had connected with it a short branch to Stroud, corresponding to the one proposed by the bill, only forming a connection with the Great Western railway. When this bill was

brought before Parliament by the independent company, the Great Western company, who had an undoubted *locus standi* on account of the connection with their system, opposed it on the ground that it would introduce the Midland to Stroud, and Parliament accordingly gave running powers to the Great Western over the small branch to Stroud. The Stonehouse and Nailsworth line then fell into the hands of the Midland company, who did not construct the small branch to Stroud, which, however, they now seek to do under the bill, but without joining our system, so that running powers could not be exercised over it by us. If, therefore, we are not heard against the bill, the Midland company will be placed at a great advantage over us with regard to the coal traffic without our being able to secure any advantage in return.

Venables, Q.O. (for petitioners): We are not responsible for the non-performance of what Parliament imposed on the Stonehouse and Nailsworth company in 1865. They took power to construct a line going over some of the same ground as the branch we now propose to construct, but it formed a physical connection with the Great Western railway, and there was a competing bill brought in by the Great Western company for doing the same thing in another way. The committee then made a recommendation that both parties should arrange for the accommodation of one another, and they objected to there being two stations at Stroud on the ground of public convenience, adding that "if the Stonehouse and Nailsworth railway is to run into the Great Western station at Stroud, which is already existing, then the Great Western company ought to have running powers over the Stonehouse and Nailsworth line, but not to touch the local traffic." We in no way took over the obligations of the Stonehouse and Nailsworth company, because it was not till they had allowed the time for making the Stroud branch to expire that we became the owners of their railway. The petitioners should have opposed our amalgamation with the Stonehouse and Nailsworth company, but have no *locus standi* against the present bill, which at most only improves existing competition without touching their system. We already carry on a considerable carrying trade with Stroud by means of our Stonehouse and Nailsworth line, and many of our customers live nearer our present station than our proposed station in Stroud itself. We are merely going to move our station more in the centre of Stroud. This is only a parallel case to that of the Great Eastern transferring their terminus at Shore-ditch to Liverpool-street. The *Severn Tunnel* case (2 Clifford & Stephens, 244) is in point.

The *Elham Valley Light Railway Bill* (2 Clifford & Rickards, 240) is not analogous. There was in that case a long mileage of new railway to be constructed; this is really an extension of an existing station.

The CHAIRMAN: We *Disallow* the *locus standi* of the Great Western Railway Company.

Agent for Petitioners, Mains.

Petition of (2) INHABITANTS OF THE DISTRICT COMPRISING SOUTHAMPTON-ROAD, GOSPEL OAK-GROVE, LISMORE-ROAD, LISMORE-CIRCUS, CIRCUS-ROAD, EAST CARLTON-ROAD, AND ADJOINING ROADS AND STREETS IN THE PARISHES OF ST. PANCRAE AND ST. JOHN, HAMPSTEAD, IN THE COUNTY OF MIDDLESEX.

Railway—Street Tramway Laid Down during Construction of Railway—Inhabitants and Owners of Property in District—Tramway Company—Quasi Frontagers—Representation—Road Authority—Temporary Obstruction—Legalisation of Nuisance—S. O. 134—Practice—Public Meeting—Absence of Allegations as to, in Petition.

A railway bill contained a clause enabling the promoters, during the construction of a tunnel, to lay down a tramway along certain public roads, situated between the tunnel and a spoil bank. A number of owners of property adjacent to the proposed line of tramway, and other inhabitants of the district, including a tramway company, joined in a petition against the clause.

The petitioners claimed to be heard generally as quasi frontagers to the proposed tramway, and under S. O. 134 as inhabitants of a district injuriously affected by the bill, which, it was argued, would have the effect of legalising an obstruction in public roads. It was objected that the road authority were the only parties who had any claim to be heard, and that the alleged temporary obstruction to the roads by a tramway was really to the advantage of the petitioners, and could not be held to be an injury to their property. The fact that the petition did not allege that it had been adopted by a public meeting was referred to in argument, but the objection was not pressed:

Held, that the effect of the clause would be to place the petitioners in the position of frontagers abutting upon a tramway, the fact of the tramway being only temporary not affecting the question of *locus standi*, which was allowed in the case of all the petitioners without distinction.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provision for taking or using any lands, houses, or other property of the petitioners; (2 and 3) they have not any control or management of the roads and streets referred to in the petition, or any such right or interest in them as to entitle them to be heard; (4) the petition was not agreed to at any meeting of the inhabitants of the said roads and streets, or of the district alleged to be injuriously affected by the bill, nor do the petitioners so represent those inhabitants as to entitle them to be heard, according to practice.

A. G. Rickards (for petitioners): We allege in our petition that by clause 4 of the bill the company seek power to make and maintain various railways and works, and amongst others, a railway, the Belsize second tunnel, to be situate in the parishes in which we are inhabitants and owners of property. The company seek further power under the same clause, for the purposes of constructing the said railway, and during the execution of the works (for completing which a period of five years is fixed by the bill), to lay down, and to work over and use rails or sidings upon or along the surface of the roads, streets, and places, among others, named in our petition. We allege that we are inhabitants of the district comprising the roads and streets referred to in the bill and of adjoining roads and streets in these parishes, and that our district will be injuriously affected. The effect of the bill, if passed, would be to enable the company, or their contractors, during the construction of the proposed tunnel, to carry the soil excavated from it, through the roads and streets of our district, along the tramways authorised to be laid down, just as the contractor may see fit, and, if convenient, to such an extent as virtually to monopolise such roads and streets, for the purpose of a traffic of the most offensive description. This power they evidently intend to exercise by the fact that the streets named in the bill form a direct route from the proposed tunnel to a vacant piece of ground, intended to be used as a spoilbank. Their object is to economise labour and money, at the expense of our con-

venience and interests. The petition does not allege that it is presented in pursuance of a resolution of a public meeting, but such an allegation is not necessary, and the fact that it is the result of a public meeting can be proved if disputed. (*Leeds Improvement Bill*, 2 Clifford & Stephens, 250.) With regard to the petition itself, it bears 168 signatures, and in several instances the same name occurs many times, but never in reference to the same property, so that every signature represents a distinct property. The signatories are substantial people representing the various interests, and generally the public opinion of the district (1 Clifford & Stephens, text 96). The London Street Tramways company, who join in the petition, have premises in the district, and have with the consent of the local authority the power of laying down a tramway from their stables, which would run along the roads, along which the temporary tramway is proposed to be laid.

The CHAIRMAN: In the case of a tramway, frontagers are allowed to be heard.

A. G. Rickards: And this is an analogous case, but the term frontagers is not used in respect of a railway, a portion of which these tramways will ostensibly be.

The CHAIRMAN: This would be a temporary tramway only.

A. G. Rickards: Temporary obstruction was held to be sufficient in the case of the *Metropolitan and Metropolitan District Railway Bill* (2 Clifford & Rickards, 190 and 197). Our petition alleges a *bona fide* injury, as to which our interests are distinct from those of the local authorities or the Metropolitan Board of Works, so that we should not be represented by them, even if they petitioned, which they do not do. (1 Clifford & Stephens, text 87-89; *South-Eastern, &c., Railway Companies Bill*, 1 Clifford & Stephens, 149; *Tees Conservancy Bill*, 2 Clifford & Stephens, 123; *Newcastle-under-Lyme Improvement Bill*, 2 Clifford & Rickards, 47; *North British Railway Bill*, *Ib.*, 52; *London Street Tramways Bill*, 2 Clifford & Stephens, dictum, p. 89; *North Metropolitan Tramways Bill*, 2 Clifford & Stephens, 90.) On the question of obstruction of access to premises and deterioration in value of property, *Lancashire and Yorkshire Railway Bill* (1 Clifford & Rickards, 236), and *London and North-Western Railway Bill* (2 Clifford & Rickards, 119) are in point. We also claim to be heard under S. O. 134, as inhabitants, as well as owners of property and quasi frontagers; and we contend that the bill by authorising the obstruction of public roads practically legalises what would otherwise be an indictable nuisance.

Venables, Q.C. (for promoters): Of the 169

signatures to the petition 53 are duplicates, and 45 are of persons not upon the roads affected by our powers, so that only 71 are left who are affected. Although a *locus standi* may be given for temporary injury, we are really proposing a benefit to the petitioners. We might carry this spoil in wagons along the roads instead of along tramways, which would create far more noise and nuisance and for a longer period. It would not be practicable for us to carry away the spoil along our main line, and laying a tramway for the purpose is the least objectionable method of conveying it to the spoil bank. As to the tramway company who petition, if we conveyed our spoil by carts along the roads, we should have a right to occupy the road, along which their tramways are laid, whereas we propose now to lay a temporary tramway entirely distinct from their system. It is a question for the road authorities to deal with.

The CHAIRMAN: We think this case is quite analogous to the ordinary case of a tramway; whether the tramway is of a temporary or permanent nature does not appear to us to make any difference, and therefore we *Allow* the *locus standi* of the Petitioners.

Agent for Petitioners, *Rees*.

Petition of (3) WILLIAM MALTBY.

Owner of House Property—Alteration and Diversion of Roads—Injury to Trade—Obstruction of Access to Business Premises—Deterioration in Value of Property by Diversion of Traffic—Public Health Act, 1875.

A railway bill authorised the promoters to divert a road between two towns, thereby practically converting a main thoroughfare into a bye-street, and also to stop up one end of a street, and make it into a *cul-de-sac*. The petitioner was the owner of a considerable amount of house property including a public-house, brewery, and shops, in one of the towns. None of his property was scheduled under the bill, but he alleged that the custom of his public-house and shops depended almost entirely upon the through traffic going along what was now the main street of the town, and that the bill would have the effect of diverting that traffic, thereby injuring his trade, and depreciating the value of his property, while the access

to his malting and brewing houses would be obstructed, and wagons coming to and from there would be obliged to use a more circuitous approach:

Held, that he sustained such an injury under the provisions of the bill as to entitle him to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) no lands, &c., of his are taken or used; (2) the only provision of the bill to which the petition refers is the power to make the new road to Basford, described in sub-section 1 of clause 8 of the bill, and to stop up the portion of the existing Nottingham road in that sub-section also described; (3) the petitioner is not nor claims to be the road authority in whom is vested the control or repair of the said existing road, nor has he any such estate, right or interest in that road, or any such interest in the substitution for a portion of it of the intended new road, as entitles him to be heard; (4 and 5) he has no special interest in the existing road, a portion of which is intended to be stopped up, nor does his petition disclose any ground whatever entitling him to be heard according to practice.

Ledgard (for petitioner): Clause 8 of the bill empowers the company to make a new road, and upon its completion to stop up a public highway, and some level crossings. The effect of this, as our petition alleges, will be to divert the whole of the through traffic to and from the town of Nottingham, which now passes through two streets together forming the High-street of Basford, into the proposed road, thereby converting the main street of Basford into a bye-street. The petitioner has considerable property in that street, which must be greatly depreciated by the proposed street alterations. His property consists of an important public-house, and a number of shops, which in common with others depend very largely on the through traffic for custom. He has also lately made arrangements for the erection of extensive malting and brewing houses, the plans for which have been approved by the Nottingham local board, and if the bill passes as it now stands, he will not be able to erect these buildings, besides which great injury will be done to the other business conducted on his premises, and the value of his property must be greatly depreciated. In addition to this, the portion of a roadway upon which the petitioner's public-house abuts will be converted into a *cul-de-sac*. The case of the *Bristol United Gas Bill* (2 Clifford & Rickards, 2) is on all fours with this.

Mr. RICKARDS: Do you raise the point that was raised there, that your right of appeal to the Quarter Sessions in respect of the stopping up of the road is taken away?

Ledgard: No; but I submit that you would take judicial cognisance of the fact that the road is now in the occupation of the corporation, and that nothing could be done to interfere with our right to use that road except under the provisions of the Public Health Act, under which we should be entitled to be heard. I refer also to the *Metropolitan and Metropolitan District Railways Bill* (2 Clifford & Rickards, 199, petitions 1, 2, and 5). This is a case of special injury which will result in destruction to our business, and as to which we should not be represented by the road authority even if they petitioned, which they do not. Several of the cases as to obstruction of access to premises cited in support of the petition of the inhabitants of Southampton-road, &c., against this bill are in point, and I crave permission to refer to them in support of the petitioner also.

Venables, Q.C. (for promoters): The alteration as to roads proposed by the bill could not be done by the Court of Quarter Sessions, so that the omission of any allusion to a right of appeal in the petition is immaterial. The case of the *Midland Railway Bill*, on the petition of Mr. Lane Fox (2 Clifford & Stephens, 108), is exactly in point. The *locus standi* of the petition against the *Lancashire and Yorkshire Bill* (1 Clifford & Rickards, 235) was allowed, because what was proposed destroyed one of two alternative modes of access to certain business premises, and because it was shown that when the road was altered certain long-shaped loads would not be able to get into the premises as before. There is no stopping up of the access to the public-house. It is, in fact, making the street less fashionable.

The CHAIRMAN: It stops up the access of carts and wagons to the malting premises.

Venables: They will have to go a little further round to get to them. Although obstruction is a question of degree, this is a different thing from impeding the access for a particular kind of traffic. There will be a public road still opposite the petitioner's premises, only one end of it will be stopped up.

The CHAIRMAN: We are of opinion that the *locus standi* of the Petitioner should be Allowed.

Agents for Petitioner, Durnford & Co.

Agents for Bill, Beale, Marigold & Groves Beale.

NORTH BRITISH AND GLASGOW, YOKER AND CLYDEBANK RAILWAY COMPANIES BILL.

Petition of THE CALEDONIAN RAILWAY COMPANY.

2nd June, 1880.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Companies, Competition between—Agreement Affecting—Amalgamation, Virtual, Through Working Agreement—Tolls and Rates Affecting Third Railway Company—Railways Clauses Act, 1863, Part III.—Regulations of Railways Act, 1873—Board of Trade, Objections urged before, against Railway Agreement—Railway Commissioners, Alleged Attempt to Oust Jurisdiction of—S. O. 123, House of Lords.

Against a bill promoted to confirm an agreement between the North British and Yoker railway companies, the Caledonian company petitioned, alleging, *inter alia*, that the agreement would injuriously affect their traffic, and deprive them of the power of appeal to the railway commissioners. The petitioners had opposed, in 1878, a bill which authorised the two promoting companies to enter into working agreements, but their opposition had not succeeded. They now alleged that the bill would remove various safeguards which they would enjoy under the general Acts:

Held, that the petitioners had no *locus standi*.

The bill was one "to confirm an agreement between the Glasgow, Yoker and Clydebank and North British railway companies, and for other purposes;" the agreement being an agreement purporting to have been entered into in November, 1879, by the Yoker company and the North British company for the maintenance, management and working by the North British company of the Yoker company's railway.

The petition alleged as follows:—"The Yoker company were incorporated by an Act passed in 1878, which authorised them to construct a short line of railway extending westward from the Stolecross branch of the North British, and two branches therefrom. Your petitioners have statutory running powers over the said Stole-

cross branch, which affords the only railway access to the district which will be traversed by the Yoker company's lines; and those lines will interfere injuriously, both physically and by competition, with canals forming part of your petitioners' undertaking, by which the said district is at present accommodated, and will deprive your petitioners of the means of supplying railway accommodation to that district. Upon these and other grounds your petitioners opposed the bill for the said Act of 1878, and were heard before the committee of your honourable House, to whom that bill was referred. During the progress of the said bill through Parliament its promoters entered into an agreement with the North British company for the maintenance, management and working of the proposed lines in perpetuity, and the eventual purchase thereof by that company; but they did not venture to ask Parliament to sanction that agreement—they merely sought and obtained power to enter into agreements for maintaining, managing and working the proposed lines, subject to the provisions of Part III. of the Railways Clauses Act, 1863, as varied by the Regulation of Railways Act, 1873. But by the bill the promoters now seek to free themselves entirely from the restrictions thus imposed on them by the Act of 1873. (1) By Part III. of the Railways Clauses Act, 1863 (to the provisions of which, as varied by the Regulation of Railways Act, 1873, any agreement which might be entered into under the Yoker Company's Act of 1878 was subject), it was provided that all other companies and persons should, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies parties thereto, on the same terms and conditions, and on payment of the same tolls, rates, and charges, as if such agreement had not been entered into. But no such provision is contained in the present bill, or in the agreement now sought to be confirmed thereby; and if the bill were sanctioned, your petitioners and the traders on their railway might, and in all probability would, be subjected to higher tolls, rates, and charges than those which might and would have been exacted from them if no such agreement had been entered into. (2) By Part III. of the Railways Clauses Act, 1863, it was further provided that before companies enter into any such agreement, notice of their intention to do so shall be given for three successive weeks in a newspaper of the county to which it relates, setting forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade,

and that the agreement shall not have any operation until it is approved by that board. But if the bill be passed, the agreement will come into operation immediately on the passing of the bill without any opportunity being afforded to your petitioners or other parties interested to object thereto, or to the railway commissioners (to whom the powers of the Board of Trade, under Part III. of the Railways Clauses Act, 1863, were transferred by the Regulation of Railways Act, 1873) to consider such objections. (3) By Part III. of the Railways Clauses Act, 1863, it was further provided that at the expiration of ten years after the making of any such agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised, and may require the companies parties thereto to publish notice of such intended revision, and may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare such modification to be part of the agreement, which shall be read and take effect accordingly. But, if the bill be passed, the railway commissioners (as coming in place of the Board of Trade) will have no power to revise or modify the said agreement at any time, however prejudicially they may consider the interests of the public to be affected thereby. If the confirmation of the agreement in question, or of any similar agreement, had formed part of the Yoker company's bill of 1878, your petitioners would have had an opportunity of showing to the committee by whom that bill was considered, the injurious effects which would result to your petitioners from such agreement; and the promoters of the present bill are not entitled to prevent your petitioners from proving those injurious effects by making the confirmation of the agreement the subject of a separate bill. The agreement sought to be confirmed by the bill is in various respects highly injurious to the interests of your petitioners. It has for the period of its endurance all the effects of amalgamating the undertaking of the Yoker company with that of the North British company, and of handing over to the latter the whole traffic to and from the district traversed by the Yoker company's lines, to the great prejudice of your petitioners, who not only at present compete for that traffic by their canals, but who, if such an agreement had not been entered into, would have enjoyed greater facilities for the use of the Yoker company's lines at moderate rates than if those lines are placed, as they are by the agreement, under the exclusive control of the North British company. Independently of the general effect of the agree-

ment in question being to give to the North British company the exclusive control of the traffic to and from the district traversed by the Yoker company's lines, there are express provisions in the agreement, which would have the inevitable result of placing the whole of that traffic in the hands of the North British company, and of causing it to pass over their railways exclusively, even where the railways of your petitioners would form better, shorter, or cheaper routes. In particular, the North British company, by article 7 of the said agreement, are empowered to fix the tolls, rates, and charges, upon all through traffic, whether passing over the North British railway, or over any other railway. It will then be in their power to impose high rates upon the traffic passing to and from places on your petitioners' lines as compared with the rates on traffic to and from places on their own lines. Again, by article 9 of the said agreement, the revenue of the Yoker company is made to a large extent dependent upon the receipts of the North British company from traffic passing over that company's lines to or from those of the Yoker company, so that the Yoker company, as well as the North British company, are directly interested in diverting to the North British company's system traffic which would otherwise pass by that of your petitioners." The petitioners further alleged:—"By article 10 of the agreement, the North British railway company and the Yoker company are reciprocally bound to forward, *viâ* the railways of each other, all traffic to and from places on their respective lines, instead of allowing it to flow either by those lines, or by the railways and canals of your petitioners, as may best suit the requirements of the traffic. In fact, the object and effect of the proposed confirmation of the said agreement are to enable the North British company to obtain a monopoly of the traffic to and from places on the Yoker company's line more complete than if it were their own railway, and to legalise those obstructions to the free flow of traffic, which the appointment of the railway commissioners was intended to prevent or remove."

The *locus standi* of the Caledonian railway company was objected to, because (1) the sole object of the bill, so far as the petitioners' objections extend, is to confirm an agreement entered into between the North British railway company and the Yoker company, under powers of entering into agreements for the maintenance and management, and use or working of the railways of the Yoker company, and the fixing, collecting and apportionment of the tolls, rates, charges, receipts and revenues levied, taken or arising in respect of traffic, conferred upon the

said two companies by the Glasgow, Yoker and Clydebank Railway Act, 1878 (hereinafter referred to as the Act of 1878), and which agreement is not in excess of those powers in any important particular, and not in any particular affecting the interests of the petitioners; (2) the petitioners petitioned against the bill for the Act of 1878, alleging, amongst other things, that the railways ought not to be sanctioned, unless they (the petitioners) obtained equal rights and privileges with the North British railway company, notwithstanding which the Act was passed with the said powers in relation to the working of the Yoker railways, and the fixing of the tolls and charges forming part thereof, and without corresponding provisions on behalf of the petitioners, and it is not now competent to the petitioners to oppose the legitimate exercise of the powers so conferred, by petitioning against the confirmation of an agreement entered into in pursuance of those powers; (3) the agreement does not in any way alter the existing relations, statutory or otherwise, of the North British railway company and the petitioners to the prejudice of any right of the latter, whose running powers over the Stolecross branch are restricted to certain specific traffic arising or terminating on that branch; (4) certain objections urged in the petition relate to the exercise under the agreement of powers expressly given by the Act of 1878 (such as the fixing of tolls, rates, charges), or to matters which are the necessary and legitimate consequence of the granting of such powers, and it is not competent to the petitioners to object to the bill upon such grounds; (5) the petitioners have no such interest in the subject matter of the bill as entitles them to be heard upon the petition against it consistently with practice.

Venables, Q.C. (for the Caledonian company): The bill proposes to carry out an ingenious piece of policy, by which the North British company and what is called the Glasgow, Yoker and Clydebank company (a sort of imaginary company, which still has a corporate existence), by dividing legislation into two or three stages, seek to exclude an opposition which they could not have excluded if all their plans had been disclosed at once. At present their power of giving favour to their own railway as against a competing railway is controlled and modified by the law, as administered by the railway commissioners, but where an express power is given by Parliament, that displaces to that extent the jurisdiction of the railway commissioners. If the North British company have a statutory right to have all Yoker traffic sent over their line, if they have

a statutory right to fix low tolls on traffic carried on their own line, and high tolls on traffic carried on the Caledonian line, that would be set up as an answer to any application for equal traffic arrangements before the railway commissioners. If the Yoker company had come for the sanction of this agreement when they came for the construction of the line, we could have urged our objections to it. The promoters say that this agreement, which they now ask Parliament to confirm, was made under the powers of entering into agreements given by the Act of 1878. If so, they would not want a new Act. Moreover, the power given by that Act of 1878 was made expressly subject to Part III. of the Railways Clauses Act, 1863, while this bill is introduced for the purpose of getting rid of the obligations and restrictions imposed by that Act, Parliament being asked to sanction an agreement that no longer would be made under the provisions of that Act. When the promoters say in their second objection that it is not competent for us to oppose the legitimate exercise of the powers conferred by the Act of 1878, by petitioning against the confirmation of an agreement entered into in pursuance of those powers, we say they are applying for something more than the powers they got in 1878. They say in the third objection, that the agreement does not in any way alter the existing relations of the North British company and the Caledonian company. At present we have, under the general law, equal rights with the North British company in any traffic coming to or from this Yoker company, but they propose to take away that right, and to give special power to the North British company. They go on to say that our running powers over the Stolecross branch are restricted to certain specific traffic arising or terminating upon that branch, but what we say is that if they had applied for confirmation of this agreement in 1878, we should undoubtedly have got running powers over this line to protect ourselves against the agreement. The statement in the fourth objection is totally inaccurate. The promoters have, under the Act of 1878, no powers of fixing tolls and rates; they have only the power of doing so subject to appeal to the railway commissioners, which they now seek to get rid of. We submit, as a company competing everywhere with the North British company, that we are entitled to be heard to show that the powers granted in 1878 ought not to be extended by the present bill.

Clerk, Q.C. (for promoters): In no respect do we in this agreement go beyond the power given us by clause 60 of the Act of 1878, which gave us the power, subject to the provisions of Part III. of the Railways Clauses Act, 1863, as

varied by the Regulation of Railways Act, 1873, to enter into agreements for maintaining, managing, using and working the Yoker line, and as to the fixing and apportionment of the tolls to be taken in respect of traffic thereon. The reason why we come for special provisions is this. The Yoker company—a small local company—are to raise two-thirds of the capital for the construction of the line, we taking power, under the Act of 1878, to subscribe a third of that capital; and in order to enable that little company more easily to raise their capital, we agree with them that, after deducting 50 per cent. for working expenses, we will guarantee them 5½ per cent. We are asked, why did not we bring this agreement before Parliament and ask their sanction to it in 1878? S. O. 123 of the House of Lords prevented our doing so. We did not ask Parliament to sanction any agreement then come to; but an agreement had been actually come to, though we could not ask the sanction of Parliament to it. The Caledonian railway company have no right to endeavour to introduce something into the agreement which has been entered into between us and the Yoker company. There is not a single clause in the agreement which in the slightest degree puts the Caledonian company in a different position to that contemplated in 1878.

Mr. RICKARDS: There is no doubt that the power to enter into agreements by the Act of 1878 was made subject to Part III. of the Railways Clauses Act. Now that it is entered into, is there anything which reserves those provisions?

Clerk: Yes.

Grahame, Parliamentary agent (for petitioners): There is nothing in the present agreement which reserves the provisions of Part III. of the Act of 1863. Those provisions of the Act of 1863 are entirely swept away by the agreement.

Clerk: The agreement scheduled to this bill says: "Whereas by an Act passed in the Session of Parliament of the year 1878 a company was incorporated under the name of 'The Glasgow, Yoker and Clydebank railway company' for making a railway from the Stolecross railway of the North British railway company to Yoker and Clydebank, with branches therefrom, and for other purposes, and the parties hereto were thereby authorised to enter into agreements as to the maintenance, management, use, and working of the railway, and as to the fixing and apportionment of the tolls, rates, and revenues taken and levied or arising in respect of traffic thereon." By the Act of 1878 that power of agreement to which we refer is to be subject to the provisions of Part III. of the Railways

Clauses Act, 1863. We state here in the agreement that it is in pursuance of those powers only that we are seeking to enter into this agreement. Though Part III. of the Railways Clauses Act, 1863, is not nominatim referred to, the restrictions contained in Part III. of that Act are incorporated by reference, because we say in the preamble of the scheduled agreement that it is in pursuance of the powers given by the Act of 1878. Article second of the agreement is that the North British railway "shall for the period of ten years from the passing of the said Act, and for such further period, after the expiring of said period, not exceeding ten years, as the Board of Trade may after the lapse of said period determine, work and manage the traffic." At the expiration of that period of ten years, when we should be obliged to go to the Board of Trade to renew the agreement under the General Act of 1863, any of the public who really were interested would have the right to go to the Board of Trade under the Act of 1878. Part III. of the Act of 1863 is incorporated under this bill of 1880; it is not reincorporated, but it is virtually incorporated. In the case of every working agreement entered into between a large company and a small company, the provisions of Part III. of the Act of 1863 apply—that every person shall be entitled to have the same advantages upon payment of the same tolls, rates and charges as if the agreement had not been entered into. Supposing Part III. of the Act of 1863 had been mentioned in the scheduled agreement, it would not have improved the position of the Caledonian railway.

The CHAIRMAN: The *locus standi* of the Caledonian Railway is *Disallowed*.

Locus Standi Disallowed.

Agents for Petitioners, *Grahames, Wardlaw, & Currey.*

Agents for Bill, *Sherwood & Co.*

NORTH STAFFORDSHIRE RAILWAY BILL.

Petition of THE MINING ASSOCIATION OF GREAT
BRITAIN.

11th March, 1880.—(Before Mr. PEMBERTON,
M.P., Chairman; Mr. FORSYTH, M.P.; and Mr.
RICKARDS.)

*Railway Company, Tolls on Minerals Levied by—
Mining Association of Great Britain, Right of,
to Oppose Tolls Levied in District—Petitions,
Duplication of—Interests of Different Sets of
Petitioners Identical.*

A railway company, whose line traversed a mineral district, promoted a bill for, among other objects, a revision of tolls and a re-arrangement of certain sidings. The bill was opposed by colliery owners, iron masters, and other traders and freighters in the district, whose petition was also signed on behalf of a local coal and ironmasters' association; and the *locus standi* of these petitioners was conceded. To another petition, presented by the Mining Association of Great Britain, the promoters objected that, though certain members of this body might be interested in the trade of the district, they should have petitioned in their individual capacity; that the association had no corporate character and no special interests entitling it to be heard; and, further, that the interests of traders and freighters in the district were sufficiently protected by the other set of petitioners:

Held, that the circumstance that there might be other persons and another association raising the same questions and having the same interests, whose *locus standi* was not objected to, would not preclude the petitioners from being heard; and that the Mining association of Great Britain, whose claim to be heard in similar cases had been established, were entitled to a *locus standi* against the bill.

The petition alleged that it was proposed by the bill "to make many new and objectionable provisions with respect to the railways and sidings of the North Staffordshire railway company, and with respect to the tolls, rates, and charges which they are authorised to levy and take." After setting out the tolls and charges to which they objected, the petitioners stated that they were "an association formed by and for the express purpose of representing the colliery proprietors and mine-owners of England and Scotland, and the coal and iron trades generally of Great Britain; and amongst other objects, for the purpose of watching and taking action on their behalf as to all bills affecting colliery proprietors and mine-owners, and the coal and iron trades." The petition further alleged that at a meeting of the members of the association, held February 19, 1880, the bill was fully considered, and it was resolved that the association should oppose the bill in Parliament, and that the petition should be signed by

the chairman of the meeting and the secretary on behalf of the association; and the petitioners also alleged that they were prepared to show that they and the colliery proprietors, mine-owners, traders, and freighters, represented by them, many of whom were very extensively interested in the coal and iron trades of the district traversed by the company's railways, and were large traders and freighters upon the railways of the company, would be very seriously injured if the proposals of the bill were sanctioned by Parliament.

The *locus standi* of the Mining association of Great Britain was objected to; because (1) the association is a self-constituted body without any Parliamentary status, and as such, is not entitled to be heard upon its petition against the bill upon matters specially affecting some only of its members who, if they object to its provisions, ought to have petitioned in their individual capacity; (2) the only signatures to the petition are those of Thomas Knowles and Matthew William Peace, and in accordance with the practice of the House of Commons, the petition can only be received as the petition of those gentlemen, but they have neither of them in their individual capacity any interest in the subject-matter of the bill such as would entitle them to be heard upon their petition against its preamble or clauses; (3) as regards the interests of the district served by the North Staffordshire railway, they are amply represented by a petition of coal and ironmasters, iron manufacturers, owners, lessees, and workers of mines and minerals, and members of the North Staffordshire coal and ironmasters' association, which has been deposited against the bill; (4) the said association is only a voluntary society of individuals having no corporate character or existence, and such a body is not entitled to be heard on behalf of persons or firms alleged to be members thereof, but who have not signed the petition.

Milward, Q.C. (for petitioners): We claim to represent the traders and freighters generally on the company's lines; and we ask to be allowed to show that if the company are empowered to make any new or further charges, corresponding benefits should be conferred upon those whom we represent by, among other things, a reduction in the company's maximum tolls and charges, a re-classification of goods, an amendment of the law and practice with regard to technical charges, provision for the compulsory transport and haulage of our goods and their more expeditious delivery, and provision for the prompt return of any empty trucks and wagons. One objection is to the signatures to the petition.

Holway (for promoters): I shall not insist upon that objection.

Milward: Last session this company proposed a bill, having for one of its objects an alteration of the tolls, rates, and charges, and to our *locus standi* against that bill no objection was raised. This case is on all fours with the *Great Western Railway Bill, 1877; Petition of Traders, Freighters, &c., including the Mining Association of Great Britain* (2 Clifford and Rickards, 18).

Holway (in reply): In this case there is a petition against the bill from the coal-owners and mineral-owners of the district, whose *locus standi* is not objected to. This is only a re-duplication of the same petition, and does not come within the principle of the case cited. These petitioners have not a different interest from those whose *locus standi* is allowed.

Mr. RICKARDS: Suppose they are a different set of traders, might not the *locus standi* of each be allowed?

Holway: The principle of this Court is not to allow a multiplication of oppositions. (*Caledonian Railway, and Forth and Clyde Navigation Companies Bill*, 1 Clifford & Stephens, 66.)

The CHAIRMAN: This association has been allowed to be heard apparently on similar petitions in other cases. The fact that there may be another association raising the same questions, and having the same interests, whose *locus standi* is not objected to, would not preclude them from being heard.

Milward: The petition of the coal-owners and mine-owners of the district may be withdrawn to-morrow by arrangement between the parties.

Mr. RICKARDS: Are the petitioners in each case identically the same persons?

Holway: No; one is the general Mining association, the other is a local association whose members are local people. It is the same thing as if the Royal Agricultural society sought to be heard against the proposed tolls on cattle in any district.

Locus standi Allowed.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Sharpe.*

Agents for Bill, *Sherwood & Co.*

ROMFORD CANAL BILL.

Petition of THE NATIONAL BANK.

16th June, 1880.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman ; Mr. HINDE PALMER, M.P.; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Extension of Time—Canal—Landowner—Creditor—Lands Sold by Arrangement—Special Injury, absence of—Breach of Parliamentary Agreement—Development of Property, Postponement of.

A banking company opposed an extension of time bill, for the construction of a canal, as landowners whose property was injuriously affected by the prolongation of the period for compulsory purchase, and as parties to an agreement embodied in a previous Act, of which they contended the bill was in violation. It did not appear that any fresh powers were sought for over the land, as to which they had been served with notice under the original Act, or that any further land of theirs was proposed to be taken, or that they would suffer any special injury as landowners, so as to take them out of the ordinary practice of the Court in cases of extension of time bills, and it was accordingly held that they were not entitled to a *locus standi* on this ground. On the question of their claim to be heard, as parties to an agreement embodied in a previous Act, it was argued for the petitioners that the promoters were by a section of the Act compelled to complete a certain channel or cut between the promoters' canal and a piece of water intended to be converted into a dock, within a period of five years from the passing of that Act. The section itself, however, only enacted that the completion of the channel, for the benefit of the petitioners, must take place before the opening of the canal for traffic, and the Court held that the period of five years fixed by Parliament for the completion of the canal could not, under the words of the section, be regarded as a matter of private contract between the parties, and that the agreement was not affected by the bill:

Held, that the *locus standi* of the petitioners must be disallowed.

The *locus standi* of the petitioners was objected to, because (1) no lands or property, rights, or interests of theirs can be taken or affected under the powers of the bill; (2) they complain in effect only that the promoters have not carried out the provisions of section 41 of the Romford Canal Act, 1875, but those provisions are in no way altered, or their rights thereunder affected; (3 and 4) they are not affected by any provisions of the bill, nor have they any interests therein entitling them to be heard.

A. G. Rickards (for petitioners): The petitioners are the freeholders of an estate called the Dagenham estate, through which the Romford canal runs, comprising a large quantity of land and the Dagenham lake, which we anticipate converting into a dock on the completion of the Romford canal, for which an extension of time is sought by the bill. We claim a *locus standi*, first, as landowners; secondly, as parties to an agreement embodied in the Romford Canal Act, 1875, section 41, which the bill violates. As landowners we claim to be heard on the ground that an extension of time is taken by the bill for the compulsory purchase of our land in common with others, as well as for the completion of works upon such lands, such powers prolonging the period of suspense, and preventing us from selling or dealing with our lands round Dagenham lake as we otherwise should, or entering into a contract for the conversion of the lake into a dock, which would enormously increase the value of our property. Landowners are not precluded from being heard as being merely creditors of the promoters for the land taken by them, where further injury is inflicted by an extension of time. (*Whitby, Redcar, and Middlesbrough Railway Bill*, 1 Clifford & Rickards, 199; *Edinburgh Street Tramways Bill*, *Ib.* 16; *Glasgow Corporation Water Bill*, *Ib.* 24; *Great Western Railway Bill*, on the *Petition of the Duke of Beaufort*, 2 Clifford & Rickards, 100.) With regard to our second ground of *locus standi*, our position as set forth in our petition is this. During the progress of the bill for the Romford Canal Act of 1875, the National Bank, who had lent a large sum of money on the security of the lands around and including the Dagenham lake, became, with the sanction of the Court of Chancery, the purchasers of those lands. On our petitioning against the *Romford Canal Bill*, with the concurrence of the official liquidator of the estates an arrangement was made with us, on condition of our with-

drawing our petition, which was embodied in section 41 of that Act, for the protection of our estate. As a further consideration for the insertion of that clause we sold the land necessary for the canal to the promoters below its real value. Sub-section 3 of section 41 provides that "the company shall make at their own expense and in such position as and according to such plan as shall be approved by the owners of the Dagenham estate, a cut or channel from the canal to Dagenham lake, open to the canal and at all times properly supplied with water for the passages of barges and boats to and from the canal from and to Dagenham lake." Then follows a provision for the cut being of the same depth as the canal, and in sub-section 4 there is a provision for a bridge across the cut with sufficient headway to allow of the passages of barges, &c., from Dagenham lake to the canal. Sub-section 5 provides "that the said cut or channel and bridge shall be completed before the canal or any part thereof is opened for the passage of traffic, and the said cut or channel shall belong to the National Bank or their grantees or assignees who, as well as their lessees, shall have the exclusive use thereof, and free access thereby to and from the canal at all times with barges, and boats, and also free access over the said bridge." Our position under the extension of time sought by the bill therefore is, that whereas that cut must, under the Act of 1875, be completed in five years, and our access to the Thames via the cut and the canal established, and full means afforded for the use of Dagenham lake as a dock and the consequent development of our property, that state of things is now sought to be postponed by the bill for 3 years longer. The practical result is that the capital we have sunk in the Dagenham lake estates will be unremunerative for a further period of 3 years, as we can do nothing with the lake till the cut is completed, while we cannot derive any profit from the surrounding lands as a recreation ground or otherwise on account of the prolonged unsightly and half-finished works for the construction of the canal.

The CHAIRMAN: Did the company take your lands without notice to treat?

A. G. Rickards: Yes, we came to terms.

Rees, Parliamentary agent (for promoters): They agreed to dispense with a notice. We are in possession of their land and they have not even had notice of the proposed extension of time, which does not apply to their lands, but to others we have not yet obtained possession of. The petitioners are no longer landowners but creditors of the canal company. No fresh powers over their lands are taken. If we were doing anything in derogation of their rights

under sec. 41 of the Act of 1875, they would have a remedy in an injunction. That section does not require that we shall execute the cut within any definite period, but that before completing the canal we shall open this side communication between their lake and the canal itself. Time is not in the essence of the contract between us embodied in that section, and the agreement as therein set forth is not invalidated or varied by the bill. The period of completion in the Act of 1875 was a matter between Parliament and ourselves, and not between the petitioners and ourselves. (*Belgravia & South Kensington New Road Bill*, 1 Clifford & Stephens, 27.) There are no special circumstances or injury alleged in the petition to take this case out of the ordinary rule, that landowners whose land has been already taken cannot be heard against an extension of time bill.

Mr. RICKARDS: They allege in paragraph 7 of their petition that the suspension of the works has caused injury by flooding to the adjacent property.

Rees: That is an injury at common law, and it does not arise under this bill. In the *Whitby, Redcar, and Middlesbrough* case the petitioner showed that actual injury resulted from the extension of time, but independently of that he had an undoubted landowner's *locus standi*. In the *Edinburgh Tramway* case new powers were taken by the bill.

The CHAIRMAN: The bill invalidated an existing agreement.

Rees: That is, however, not the case here, our agreement to open the cut before the canal is completed being unaltered. In the *Great Western* case the petitioner had not been served with a notice to treat under the original bill, and the lands to be taken were entirely undefined, and, therefore, he was not a creditor of the company.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agent for the Bill, Rees.

Agent for the Petitioners, Bell.

SOUTHWARK AND VAUXHALL WATER BILL.

Petitions of (1) LAMBETH WATER COMPANY; (2) KENT WATERWORKS COMPANY; (3) CHELSEA WATERWORKS COMPANY.

7th June, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; Mr. HINDE PALMER, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Water Companies, Apprehended Competition between—Competition between Water Companies, Increase of Existing—Reservoirs, Objection by Neighbouring Company to Construction of—Increase of Capital by Water Company—Supply of Water in Bulk, New Competition with Neighbouring Company by—Agreements, Permissive, between Water Companies as Ground of Opposing Bill—Amalgamation, Permissive, between Companies, Locus Standi Against—Water Supply for Consumption Outside Statutory Limits of Company—Interference with Mains and Pipes of Water Company, by Works of Competing Company—Limitation of Locus Standi in respect of, Discussed and Defined—Practice—Clause, Clerical Error in—Preamble, Right of Opposing, owing to.

A metropolitan water company promoted a bill for increasing its capital and constructing new reservoirs and works. It also sought for power to supply water in bulk. Three other metropolitan water companies petitioned, two complaining of interference with their pipes, &c., by the proposed new works and claiming on this ground a landowners' *locus standi*, and all seeking to be heard generally by reason of the competition to which they might be subjected if the promoters were empowered to supply water in bulk for possible use outside the statutory limits of the promoters:

Held, (1) that the petitioners were entitled to a *locus standi*, but limited, "for the purpose of protecting their own pipes and works against such parts of the works clause as may interfere therewith, and against so much of the preamble as relates thereto;" and (2) as to competition, that the raising of new capital and construction of works in themselves gave no right for rival companies to be heard, these powers being for

the improvement of an existing competition, and that their *locus standi* must be limited to the clauses authorising a supply in bulk and to the preamble relating thereto, these clauses tending to create a new competition.

According to the general rule, petitioners are not heard against merely permissive powers to enter into agreements. The preamble of the bill in this case set forth the expediency of an amalgamation, "by agreement," of the London water companies; but it appeared that by a clerical error in one of the clauses, the power of submitting a scheme of amalgamation to the local government board was given to the promoting company alone. Three companies who would be included in the amalgamation scheme asked to be heard against this part of the bill:

Held, that their right to a *locus standi* was not confined to the clause for the purpose of rectifying the error in question, but extended to so much of the preamble as related to the amalgamation clauses, notwithstanding the fact that the preamble was in terms permissive.

The bill was one "for empowering the Southwark and Vauxhall water company to construct additional works and to raise additional capital, and for other purposes." After reciting the incorporation of the company in 1852, the grant of further statutory powers in 1855, 1864, 1867, and 1872, and the fact that the authorised share capital of the company amounted to £1,518,000, and its loan capital to £482,000, and that excepting a sum of £160,000 of share, and £50,000 of loan capital, the whole of the authorised capital had been expended or used as working capital, the bill proposed the issue of additional share capital to the amount of £650,000, and of £163,000 on loan. The bill also proposed the construction of new reservoirs and the laying down of mains and pipes, and the preamble recited as follows:—

"And whereas the Lambeth waterworks company have now Parliamentary powers for the supply of water within certain parts of the company's limits of supply, and the exercise of such powers, and of the powers of the company, would occasion an unnecessary expenditure of capital, and an unnecessary interference with roads and streets; and it is, therefore, expedient that provisions, such as are in this Act contained, should be made for enabling the company, and

the Lambeth waterworks company, to enter into contracts and agreements with respect to such supply :

"And, whereas, it is also expedient that agreement should be made for the amalgamation, by agreement, of the company, and all or any of the following companies, namely, the New River company, the East London waterworks company, the company of proprietors of the West Middlesex waterworks, the company of proprietors of Lambeth waterworks, the governor and company of Chelsea waterworks, the Grand Junction waterworks company, and the company of proprietors of the Kent waterworks (which last-named companies and the company, are in this Act called 'the companies')."

Clause 32 related to the supply of water in bulk, and was as follows:—"Subject to the provisions of this Act, the company may, from time to time, enter into and carry into effect such contracts and arrangements with any corporation, urban or rural sanitary authority, or other local authority, and the trustees of any turnpike or other road, or any highway board, or any surveyors of any highway, and any railway company, and any other companies, bodies or persons with respect to the supply of water in bulk or otherwise, as the company think fit; and every such contract and arrangement may be for such period, on such terms, pecuniary or otherwise, and conditions as the company think fit, and the company may, by agreement, vary, suspend or rescind any such contracts or arrangements and make others in lieu thereof, and in addition thereto." Clause 33 provided that such supply in bulk should not be given if it prevented the company from giving a full and efficient supply for domestic purposes. Clause 35 provided that the company and the Lambeth company might agree as to the supply of water in particular districts. Clause 36, relating to the amalgamation scheme, was as follows:—

"The company may, as soon as may be after the expiration of six months from the passing of this Act, settle a scheme for the amalgamation of the companies, or some of them, and shall submit the same to the local government board, and such scheme shall be framed with a view to the reduction of the expenditure of the companies."

Clause 37 provided for the consideration of the scheme by the local government board, and of any representations made to the board respecting it, after public notice given by the board that such scheme had been submitted. Clause 38 was as follows:—

"If the companies assent to the modifications (if any) suggested by the local government

board, and the scheme, whether modified or not, is confirmed by order of Her Majesty in Council, the same shall have full effect, and shall be as binding as if it had been enacted by Parliament."

By clause 39 any scheme under the Act was to contain proper provisions respecting a re-arrangement of districts of the companies, the mode of dealing with their capitals, &c., and such scheme was also to "provide for proper compensation to any secretary, engineer, accountant, collector, or other salaried officer of any company whose office or employment is abolished by, or will become unnecessary under, the scheme."

The *locus standi* of the company of proprietors of Lambeth waterworks was objected to, because (1) excepting the second paragraph, which alleges a general objection to the bill, the first 10 paragraphs of the petition are mere recitals, and contain no allegation upon which the petitioners desire to be heard; (2) paragraph 11 of the petition consists of an irrelevant allegation that a supply by two companies in the same streets is detrimental to the public interests, and might render it necessary for the petitioners to cease giving a constant supply, but there is nothing in the bill authorising a supply by two companies in the same street, and the petitioners are not entitled to be heard upon the 11th paragraph of their petition, or upon the 12th paragraph, which relates to the same matter; (3) paragraph 13 contains a vague allegation that the bill is aggressive, and calculated to lead the petitioners and the promoters into competition, hostility, and waste of capital, all of which the promoters deny; but even if true, these allegations are too vague to entitle the petitioners to be heard; (4) paragraphs 14, 15 and 16, relate to the reservoirs, for the construction of which powers are sought by the bill, and allege that such reservoirs are (a) larger than necessary; are (b) projected to enable the promoters unfairly to compete with the petitioners; (c) would involve an unnecessary expenditure of capital by the promoters; and (d) a waste of capital by the petitioners; and (e) will endanger the existing reservoirs and other works of the petitioners. The size of the proposed reservoirs, and the expenditure of capital by the promoters, are matters with which the petitioners have no concern. The new works proposed to be authorised by the bill, and, indeed, the whole of the powers thereof, are required solely for the purposes of better enabling the promoters to carry out the duties and obligations put upon them by Parliament, and there are no new powers of competition in the bill. The petitioners' alleged

apprehension of danger from the construction by the promoters of the proposed works is speculative and has no foundation, and confers no right upon them to be heard, and particularly as no land or property of the petitioners are proposed to be taken or affected by the bill. The general Acts afford sufficient protection to the petitioners in relation to that matter; (5) paragraph 17 alleges that the construction of certain proposed reservoirs would prevent the petitioners from extending their own works if they should require to do so, but the petitioners are not entitled to be heard upon this ground; (6) paragraphs 18, 19, 20 and 21, relate to the supply of water in bulk, with respect to which the petitioners claim to be heard upon the ground of competition. Competition between the promoters and the petitioners is not created by the bill, but is already sanctioned by Parliament, and the petitioners are not entitled to be heard upon any question of competition; (7) paragraph 32 of the petition relates to clause 35 of the bill, by which it is proposed that with respect to any parish, district, or place in which the promoters and the petitioners respectively supply water, the promoters and the petitioners may enter into agreements as to such supply. This is an enabling clause only, providing for a voluntary agreement between the promoters and the petitioners similar to the subsisting agreement referred to in the petition, and cannot prejudicially effect the petitioners; (8) paragraphs 23, 24, 25, 26, 27, 28 and 31 of the petition relate to amalgamation, but as stated in the preamble, the provisions of the bill with respect to amalgamation are permissive, and provide for amalgamation by agreement only, and therefore such provisions in no way prejudicially affect the petitioners; (9) paragraphs 29 and 30 consist of general and perfectly irrelevant statements of exemplary conduct on the part of the petitioners, and bad conduct on the part of the promoters, but disclose no ground entitling the petitioners to be heard; (10) paragraphs 32 and 34 contain further complaints of apprehended competition, but Parliament has already sanctioned competition between the promoters and the petitioners, and the bill does not alter the relations between the promoters and the petitioners, who therefore have no right to be heard upon that subject; (11) paragraph 33 alleges that the estimate is insufficient, but this is a matter which cannot possibly concern or affect the petitioners; (12) paragraph 35 alleges that the company have supplied, and are supplying water outside their Parliamentary limits of supply, but this is another matter with which the petitioners have no concern, and upon which

they are not entitled to be heard; (13) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard on their petition against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

The *locus standi* of the Kent waterworks company and of the governor and company of Chelsea waterworks was objected to on the last-mentioned ground, and also because the provisions of the bill with respect to amalgamation are, as stated in the preamble, to be by agreement, and provide for a voluntary amalgamation only, and such provisions in no way prejudicially affect the petitioners. The *locus standi* of the Kent company was also objected to, because it is not true, as alleged by the petitioners, that the provisions of the bill, with respect to the supply of water in bulk, would enable the promoters to supply water within the petitioners' district of supply, nor is there anything in the bill which entitles the petitioners to be heard on the ground of competition.

In the case of the Chelsea waterworks, there was the following distinct ground of objection:—The petitioners allege that the promoters propose to lay mains and pipes along or under roads in which the petitioners have already laid mains and pipes, and that the petitioners apprehend injury to their mains and pipes, but the circumstance of the petitioners having laid mains and pipes in such roads does not constitute them owners, lessees, or occupiers of the roads in question, or confer upon them any right to be heard against the bill, nor have they any such right. The promoters already possess similar rights.

Granville Somerset, Q.C. (for Lambeth waterworks company): First, we are interfered with as landowners; secondly, we ask to be heard on the ground not only of increased competition but of new competition; thirdly, we claim a *locus standi* on the ground that we are included in the scheme of amalgamation proposed by the bill. As to the first point, we say that two of the promoters' reservoirs will be constructed near our Coombe and New Norwood reservoirs, which may be endangered thereby, and that certain aqueducts, conduits and lines of pipes of the promoters will interfere with our works. The limits of the Southwark and Vauxhall company comprise part of the limits of the Lambeth water company, so that they would have power to lay those pipes in our district.

Bidder, Q.C. (for promoters): I am prepared to concede at once to the Lambeth company and to the other petitioning companies similarly situated a *locus standi* limited as in two reported cases,

Granville Somerset: The decision of the Court will follow the decision in the *St. Katherine's Dock* case.

Bidder: As regards clause 5, I concede the petitioners a *locus standi*, for the purpose of preventing interference with their water pipes; but they are not entitled to a *locus standi* to discuss the expediency of the works being constructed.

Mr. RICKARDS: We meant to give a *locus standi* for the protection of the petitioners' own works.

Bidder: But you did not, I apprehend, intend to give them a *locus standi* against the works clause, "and so much of the preamble as relates thereto?" That would give them a right to be heard against the expediency of the bill.

Mr. RICKARDS: How would it be to say, "a *locus standi* against clause 5 for the purpose of the protection of their own works," or words to that effect?

Bidder: I would suggest that you take the words at the bottom of page 161 in the report of the *St. Katherine's Dock* case:—"And so much of the preamble as relates thereto, for the purpose of preventing interference with water pipes along the roads in question."

Mr. RICKARDS: There is a difficulty in picking out the parts of a long section like section 5, to which the opposition should be directed. We had better say, "*locus standi* allowed to the Lambeth water company for the purpose of protecting their own pipes and works against such parts of clause 5 as may interfere therewith, and against so much of the preamble as relates thereto." Then there would be a similar *locus standi* to the Chelsea water company so far as regards interference with works, and a *locus standi* to the Lambeth water company and the Kent water company against clauses 32 and 33, and so much of the preamble as relates thereto.

Locus standi of Lambeth Waterworks Company Allowed for the purpose of protecting their own pipes and works against such parts of clause 5 as may interfere therewith, and against such parts of the preamble as relate thereto. Also against clauses 36 to 41 inclusive, and so much of the preamble as relates thereto. Also against clauses 32 and 33, and so much of the preamble as relates thereto.

Locus standi of Kent Waterworks Company Allowed against clauses 36 to 41 inclusive, and so much of the preamble as relates thereto. Also against clauses 32 and 33, and so much of the preamble as relates thereto.

Locus standi of Chelsea Waterworks Company Allowed for the purpose of protecting their own pipes and works against such parts of clause 5

as may interfere therewith; and also against clauses 36 to 41 inclusive, and so much of the preamble as relates thereto.

Agents for Lambeth Waterworks Company, *Bell & Steward*.

Agent for Kent Waterworks Company and Chelsea Waterworks Company, *Ross*.

Petition of (4) METROPOLITAN BOARD OF WORKS.

Practice—Objections to Locus Standi, Rule as to—Agent's Signature to, Necessity of—Endorsement of Objections by Promoters' Agent—Procedure of Referees under S. O.

The rule as to notice of objections to *locus standi* does not specify that such notice shall be signed by the promoters, but requires that it shall be endorsed with the name of the petitioners' agent. In a case where the notice was not signed but was endorsed on the outside by the agent for the bill, a preliminary objection was taken on the part of petitioners that the objections were informal for want of signature: Held, that the outside endorsement by the agent for the bill was sufficient, and objections over-ruled.

Cripps, Parliamentary agent (for petitioners): In this case we raise the preliminary objection that the notice of objections served on the agents for the Metropolitan Board of Works is not signed as it should have been by the promoters' agent. (*Carnarvonshire and Nantlle Railway Company's Bill*, 1 Clifford & Stephens, 2.)

The CHAIRMAN: Though the objections are not signed, the notice is endorsed on the outside, "James Hooker, 28, Parliament-street, Agent for the Bill."

Cripps: That is not enough. It is necessary that notices should be signed by the agents: otherwise there is nothing to show conclusively that they are issued by authority of the promoters.

Bidder, Q.C. (for promoters): The rule as to objections to *locus standi* requires that the promoters shall give notice of their intention to object, and of the grounds of their objection, to the clerk to the Referees and to the petitioners' agents; and then the rule says "all notices shall be endorsed with the names of the peti-

tioners' agents." The rule says nothing about the signing of objections by the agents for the bill.

Cripps: The words "petitioners' agents," at the end of the rule, refer, of course, to the petitioners against the bill, and not to the promoters.

The CHAIRMAN: The Court are of opinion that the notice is sufficient.

Objection over-ruled.

9th June, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; and Mr. RICKARDS.)

Practice—Referees, Hearing by Two, by Consent of Parties.—Water Supply of London—Metropolitan Board, as Representing Ratepayers and Water Consumers—Capital, Increase of, by Water Company, Metropolitan Board Opposing—Amalgamation of Water Companies, Opposed by Metropolitan Board—S. O. 134 (as to Local Authorities)—Metropolis Water Supply Act, 1871—Metropolis Local Management Act, 1855.

The Metropolitan Board of Works petitioned against a bill promoted by a metropolitan water company for, *inter alia*, raising new capital, constructing new works, and bringing about an amalgamation of the various companies supplying water within the metropolitan area. A *locus standi* limited to the protection of roads and sewers was conceded to the Board, but they claimed a general *locus standi* (1) under the S. O. as the local authority having the management of the metropolis; (2) as having certain powers of control over the water supply under the Metropolis Water Supply Act, 1871; and (3) on the ground that the amalgamation scheme was one injurious to the ratepayers, and that no bill increasing the power of any metropolitan water company should pass while the whole question of the water supply of London was under consideration by Her Majesty's Government and by Parliament:

Held, under the discretionary power given to the Referees by the S. O., that the metropolitan Board were entitled to a general *locus standi*.

[By consent of the parties this case was heard before two Referees.]

The *locus standi* of the Metropolitan Board of Works was objected to on the following grounds:—(1) no land or property of the petitioners is proposed to be taken or affected; (2) there is nothing in the bill prejudicially affecting any right, power, or jurisdiction of the Board, either as consumers or as representing the ratepayers and inhabitants of the metropolis; (3) no new waterworks are proposed to be constructed within the metropolitan area, and the promoters have already power to break up roads and streets, but, if not, the general Acts afford to all bodies and persons affected sufficient protection; (4) the petitioners object to the provisions of the bill providing for amalgamation, but that is a matter with which the petitioners have no concern and upon which they are not entitled to be heard; (5) the petitioners do not allege any ground in their petition, nor have they any interest, which enables them to be heard upon their petition against any of the provisions of the bill, consistently with the ordinary rule and practice of the House of Commons.

Bidder, Q.C. (for promoters): We concede that the Metropolitan Board of Works are entitled to a *locus standi* to protect their roads and sewers.

O'Hara (for petitioners): We claim a general *locus standi*. This is a case of great importance looking at the position of the Metropolitan Board of Works at the present moment with regard to metropolitan water supply. We ask to be heard under S. O. 134, which gives the Court discretion to allow the local authority having the management of the metropolis to appear in such cases as the present. The Metropolitan Board, under the General Act of 1855, which constituted them, are charged with the local management of the metropolis. The bill takes power to raise £350,000 additional capital—more than one-third of the existing capital—and to raise additional loan capital. It also takes power to carry out certain new works, and it moreover takes a general power of amalgamation with other companies which, in the interest of the metropolitan ratepayers, we consider exceedingly objectionable.

Mr. RICKARDS: With regard to gas, there are statutory enactments constituting the Metropolitan Board of Works the authority, are there not?

O'Hara: Yes.

Mr. RICKARDS: That is not the case with regard to water?

O'Hara: Yes, we say it is. By the Act of 1871 regulating the supply of water to the metropolis, the Metropolitan Board are constituted the water authority within the metropolis

outside the city limits. Last night the House of Commons, by resolution, allowed the Metropolitan Board to appear by counsel before the select committee on metropolitan water supply to represent the interests of the metropolis outside the city. Whenever the Metropolitan Board of Works have sought to appear against the bills of water companies they have always been allowed a *locus standi*. It may be said that this is a capital bill, and that in a matter affecting capital the Metropolitan Board have not a right to be heard. Against the *Grand Junction Water Bill*, 17th May, 1878, which was a capital bill, pure and simple, the Metropolitan Board of Works presented a petition alleging that the company ought not to be allowed to increase their capital in the way proposed, and no objection was made to their *locus standi*.

Bidder : If the *locus standi* was conceded for some reason it is not a precedent.

O'Hara : However, our *locus standi* was not disputed, and we got the auction clauses inserted in the bill. Further, we say that this is an inopportune moment for the granting of any further Parliamentary concessions to these water companies. We object to any legislation for the benefit of these water companies pending the settlement of the general question of water supply; and we say that this company ought not to be allowed to get the present and the prospective benefit of this new capital at a time when the whole question is *sub judice*.

The CHAIRMAN : You say you represent the ratepayers within the terms of S. O. 134, by virtue of the powers given you in the Metropolis Water Supply Act, 1871 ?

O'Hara : I say first of all, under the Act of 1855 we are the authority having the local management of the metropolis; and then I say that the Act of 1871 made us the local authority as regards water supply. As to the amalgamation clauses there is a doubt whether under those clauses all the water companies could not be amalgamated under one management. They are most objectionable clauses in the interests of the ratepayers. In cases where vestries have appeared the Metropolitan Board of Works have also been allowed a *locus standi*, and so also in cases even where vestries have been refused a *locus standi*.

Bidder, Q.C. (in reply) : No decision by this Court can be cited to bear out this claim. As to the appearance of the Metropolitan Board before the committee on the *Grand Junction Water Bill* in 1878, that may have been allowed by an oversight on the part of the promoters, or by concession, but there is this important difference between that case and this. The Metropolitan

Board of Works themselves had two bills in Parliament during that session to take the water supply of the metropolis into their own hands.

O'Hara : Here the Government are promoting a bill.

Bidder : There is no bill before Parliament at present. As to the Act of 1871, under which the Metropolitan Board claim some right in respect of water supply, they are only entitled under that Act to call for a constant supply, and to put pressure upon owners who will not do what is necessary in the way of altering fittings. S. O. 134 gives you a discretion. I submit that this is not a case in which you will exercise discretion in allowing the Metropolitan Board to be heard generally. This is simply a bill to enable the company to get more water. It does not alter their obligations to the public in any respect. If the Metropolitan Board had said that this company proposed to amalgamate with the other companies, and in so doing, proposed to do something that would prejudice the ratepayers and water consumers, there might have been something in their claim. But the petitioners do not say that anything can be done under this bill to prejudice in any way the water consumers. When we alter the word "company" into "companies" in clause 36, as we propose to do, the bill will then contain merely a voluntary power of amalgamation, and there is no power to enable the amalgamating companies to slip out of any of their obligations to the public. The *Preston Gas Bill* (2 Clifford & Rickards, 215) is a case in point; the question there being the right of a local authority to have something to say against a capital bill.

O'Hara called attention to the case of the *Gas Light and Coke Company's Bill* (2 Clifford & Stephens, 217).

Bidder : The ground upon which the *locus standi* of the Metropolitan Board was allowed in that case was that under certain Gas Acts they were the general superintending authority for London as regards the quality of gas and the price. They have those powers with regard to gas, but they have not those powers with regard to water. The only power they have with regard to water is to call upon the companies to provide a constant supply.

Mr. RICKARDS : In that respect, and in respect of some other points under the Metropolis Water Supply Act, 1871, they seem to be placed in the position of a superintending authority ?

Bidder : I think not. All that they have power to do is to demand a constant supply.

O'Hara : All the accounts of the company have to be sent to us.

Mr. RICKARDS Section 22 (confirmation of

regulations) refers to the Metropolitan Board; they are to be heard with respect to regulations.

O'Hara: By section 10 we are actually empowered to go in and put up fittings ourselves.

Bidder: That has only to do with a constant supply. Here the petitioners do not show that the bill will interfere with or prejudice any rights of the consumers entitling them to be heard.

The CHAIRMAN: We think the Metropolitan Board of Works are entitled to a *locus standi*.

Locus standi Allowed.

Agents for Metropolitan Board of Works,
Dyson & Co.

Petition of (5) CORPORATION OF KINGSTON-UPON-THAMES.

Local Board Opposing Gas Bill—Roads, Interference with, by Gas Company—Claim by Local Board as Landowners, in respect of—Surface and Subsoil of Roads, Property in—S. O. 184 (as to Local Authorities)—Gasworks Clauses Act.

The corporation of Kingston petitioned against a bill promoted by a metropolitan gas company, who proposed to raise new capital, construct new works, and bring about the amalgamation of the various metropolitan gas companies. A limited *locus standi* was conceded to the petitioners in respect of interference with the roads under their control, but they claimed a general landowners' *locus standi* on this ground, and also asked to be heard generally as a local authority under S. O. 184. A *locus standi* by the Court to the Metropolitan Board, in opposition to the amalgamation scheme had already been given:

Held, that the petitioners were entitled to appear for the protection of their roads, but not generally in opposition to the bill.

The corporation of Kingston-upon-Thames alleged that their borough was included in the district of the Lambeth company, one of the several gas companies whose amalgamation was provided for by the bill; that the inhabitants of the borough might be prejudiced by such amalgamation, and that during the construction of the proposed works, certain roads and streets under their control would be obstructed and interfered with. They alleged that "so much

of the preamble of the bill as affirmed the expediency of granting the powers to which your petitioners object, is unfounded and cannot be substantiated," and they prayed to be heard "against so much of the preamble as aforesaid, and against such of the clauses and provisions of the bill as affect the rights and interests of your petitioners, and of the inhabitants," &c.

The *locus standi* of the corporation of Kingston-upon-Thames was objected to on the following grounds:—(1) the petitioners allege that power is sought by the bill to enter upon, break up and interfere with the streets and roads within the parish of Kingston-upon-Thames and under the jurisdiction of the petitioners, but this is a mistake, as there is no such power in the bill. The promoters already possess Parliamentary powers to break up streets and roads within their limits of supply; (2) it is denied that the obstruction and interference with traffic, and the interruption of communication referred to in paragraphs 8 and 4 of the petition, will be occasioned by the exercise of any powers contained in the bill; but if the truth of those allegations were admitted, the petitioners are not entitled to be heard thereon against the preamble of the bill, but at most in support of clauses for their protection; (3) paragraphs 5, 6, 7 and 8, of the petition relate to the provisions of the bill as to amalgamation, but those provisions in no way affect the petitioners, and they are not entitled to be heard thereon; (4) the petitioners do not allege any ground in their petition, nor have they any interest, which entitles them to be heard on their petition against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

C. A. Cripps (for corporation of Kingston-upon-Thames): We are the local authority of Kingston under the Public Health Act, and also the municipal authority; and we allege that Kingston and the inhabitants will be injuriously affected by the bill. Then we allege that the powers sought by the bill to construct the several waterworks therein described will authorise the company to enter upon, break up, and interfere with streets and roads within the parish of Kingston-upon-Thames, and under our jurisdiction, and that such powers will tend to obstruct and interfere with traffic into and from the borough.

Bidder (for promoters): We concede a *locus standi* to the corporation of Kingston as far as regards interference with roads.

Cripps: We claim a general *locus standi* as landowners in respect of our streets and roads.

According to the decision in *Coverdale v. Charlton* (Law Rep. 3 Q.B.D., 376) the surface of the roads is actually divested out of the ordinary owner and vested in the governing body, and the street authority is as much the owner of the land as an ordinary landowner where a railway company proposes to take his land; for in the case of an ordinary landowner, according to the decision by the Court of Queen's Bench in the case of the *Great Western Company v. Bennett*, which was affirmed in the Court of Appeal (Law Rep., 2 H.L. 27), the railway company has no right to the subsoil, but merely to the surface of the land. It has no right to the minerals under the land.

Bidder: While the Railway Clauses Act excepts minerals, it provides that everything but minerals shall vest in the railway company.

Cripps: When there is anything of value under the landowner's land, the company has merely the right to the surface. In the case of the *Metropolitan Railway Bill* (2 Clifford & Stephens, 104), the Metropolitan Board of Works were given a general *locus standi*, the proposal there being to make certain ventilation holes along the Edgware-road, which might interfere with the traffic of the road. Our case goes further, because not only are we the municipal authority in Kingston, but we also have the management of the streets vested in us, whereas in London the management of the streets is vested not in the Metropolitan Board at all, but in the vestries. We ask also to be heard under S. O. 134, against the power to amalgamate with other companies, which is taken by this bill. We are supplied at present by the Lambeth company, and after their dividend rises to 10 per cent. the ratepayers of Kingston, whom we represent, are entitled to have their water rates lowered. The power taken by the bill to amalgamate the Southwark and Vauxhall company with the Lambeth company, if put into force, would postpone the period at which our rates would be lowered, seeing that the dividend paid by the Southwark and Vauxhall company is less than that of the Lambeth company. The *Birmingham Water Bill*, on the *Petition of the local boards for Acton and Handsworth* (1 Clifford & Rickards, 143) is a case in point.

Bidder (in reply): Mr. Cripps asks for a general *locus standi* when the petition only asks for a limited one, for it says, "so much of the preamble as affirms the expediency of granting the powers to which your petitioners object is unfounded."

Cripps: If allowed a general *locus standi*, we could only be heard upon what is contained in our petition.

Bidder: All that the corporation could possibly

be entitled to be heard against would be the amalgamation clauses, but I submit that as the Metropolitan Board has been admitted to be heard, they will sufficiently represent the interests of the public in that matter.

The CHAIRMAN (after deliberation): We think that the corporation of Kingston are entitled to a *locus standi* only against so much of clause 6 (the works clause) as may interfere with the roads within the parish of Kingston-on-Thames under the jurisdiction of the corporation, and so much of the preamble as relates thereto.

Agents for Corporation of Kingston, *Dyson & Co.*

Agents for Bill, *Wyatt, Hoskins, & Hooker.*

TRAMWAYS ORDERS CONFIRMATION (No. 2) (NORTH-EAST METROPOLITAN TRAMWAY ORDER) BILL.

Petition of (1) OWNERS, OCCUPIERS, &c. (FRONTAGERS OF ISLINGTON); (2) NORTH METROPOLITAN TRAMWAYS COMPANY.

23rd June, 1880.—(Before Mr. PARKER, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramways—New Lines of—S. O. 135—Frontagers Their Action before Board of Trade—How far Binding in Parliament—Vestry, Also Petitioning—Representation—Existing Tramways, Interference with—Crossings—Parallel Lines, Competition by, How far Maintainable—Tramway Companies, Interest of, in Streets—Easement, Effect of—Parliamentary Concession; Enjoyment of, Disturbed—Railway and Omnibus Competition, Compared—Financial v. Physical Interference—Works Clause Insufficient.

Against a bill authorising the construction of new lines of tramway, two petitions were presented, one emanating from frontagers, whose interest was not denied, but who were alleged to have either assented, or not objected to the order when before the Board of Trade, and who were also said to be represented, in whole or in part, by a petitioning vestry. The second petition was from an existing tramway company, who complained of the competition that would arise from a rival route along streets, different and at some distance from each other, but virtually parallel, and also of

direct crossing of their rails at specified points. The promoters conceded a *locus standi* to the petitioning company against the "works" clause, but denied that existing tramway companies, as such, were entitled to a *locus* on the ground of competition, or had, in fact, ever succeeded in obtaining one:

Held, as regards the frontagers, that their *locus standi* in Parliament, under the S. O., was not affected by what might have happened elsewhere; and, as regards the tramway company, that they ought to be heard on the ground of competition, as well as of physical interference.

(*Per Cur.*) Where a body of persons have obtained from Parliament a concession or privilege, on the faith of which they have invested their money, are they not entitled to be heard when other persons come for powers that would affect the enjoyment of that privilege?

The *locus standi* of the frontagers of Islington was objected to, because (1) none of the petitioners (save those who had already assented before the Board of Trade) were frontagers in those parts of the streets where the rails approached nearer than the prescribed width to the pavement; (2) the tramways consequently could not injuriously affect their use or enjoyment of premises, or the conduct of their trade or business; (3) the local and road authorities generally having signified assent, and the vestry of St. Mary, Islington, having petitioned against the order, it was inconsistent with practice that both the petitioners individually and their representatives should be heard; (4) being owners of horses and carriages using the streets gave them no further voice; (5) all the requirements of the Board of Trade having been complied with, the matter ought not to be re-opened; (6 and 7) petitioners had no sufficient interest.

The *locus standi* of the tramway company was objected to, because (1) any interference with the existing tramways was sufficiently protected by clause 22; (2) no greater inconvenience or danger would result from the working of the proposed tramways than was caused by the passage of waggons, carts, &c., along those streets at present; (3) there would be no competition within the meaning of the S. O.; (4) no land, house, &c., of the petitioners would be taken; (5) petitioners were not owners of, and had no monopoly of the streets; they had no

other right in them than any of the public beyond an easement to maintain and work their tramways, and except as to physical interference (with regard to which clause 22 protected them) they had no right to be heard; (6) the petition did not disclose any sufficient ground according to practice.

Ledgard (for petitioners (1)): The petitioners, numbering 100 or 120, are all frontagers. They do not claim a general *locus standi*, but only a *locus standi* as frontagers.

Little, Q.C. (for promoters): Certain of the petitioners assented before the Board of Trade to the tramways, though they now dissent. We say those are not entitled to be heard, though the others are.

Ledgard: Whether or not any of the petitioners consented to the tramways being laid down may be a fact to be brought before the committee, but it has nothing to do with the question whether they are entitled to a *locus standi* as frontagers under S. O. 135. If the promoters had intended to challenge the fact that any of the petitioners were frontagers, they should have said, "we object to so and so because he is not a frontager." Suppose a frontager assents to a thing and then dissents, it does not destroy his right to appear as a frontager.

Mr. RICKARDS: It does not appear to me that the notice of objection is pointed at the qualification described in S. O. 135.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Allowed* under S. O. 135.

Pembroke Stephens (for petitioners (2)): Our petition alleges that it is proposed by the order to empower the promoters to construct and maintain certain tramways of an aggregate length of about 9½ miles, and amongst them three tramways designated respectively tramway No. 4, No. 4 g, and No. 6 g. Tramway No. 4 is intended to be carried across our own system of tramways on the level at three different places, namely, in Liverpool-road, in Holloway-road, and Seven Sisters'-road; tramway No. 4 g is also intended to be carried across our tramways on the level in Seven Sisters'-road; and tramway No. 6 will be laid by the side of and parallel to a portion of our tramways, and, in all cases except the last, our tramways consist of a double line of rails, so that the interference with our works will be serious. The routes adopted are for the most part along narrow by-streets and side streets and country roads, where there is no such amount of traffic as would justify the laying down of tramways, or admit of their being profitably worked. But the promoters desire in some measure to

remedy this defect by laying down their tramways, so that they may have the opportunity of abstracting from our lines at certain points traffic which we now carry. We submit that no considerations can be adduced to justify so injurious an interference with our undertaking. The proposed tramway starts at Smithfield, and passes to the Angel at Islington, along St. John's-street, then along Barnsbury-road, Hemingford-road, Richmond-road, St. James's-road, and Benwell-road to Finsbury-park, on the one hand; and by Gillespie-road, Blackstock-road, Seven Sisters'-road to Wood-green, on the other. This would be in competition with our line from Finsbury-park, along Seven Sisters'-road, and Holloway-road and Liverpool-road to the Angel, and thence to Aldersgate-street; and also with another of our lines along the Canonbury-road and the New North-road to Finsbury-circus. Besides the ground of competition, we object to the interference with our lines in the manner explained in the petition.

The CHAIRMAN: How is the crossing of one tramway by another managed in construction?

Stephens: We say it would be most inconvenient, and that in working accidents would be constantly impending through the risk of cars running into one another. As to that, they have put a clause into the order, which they say protects us, but we are not satisfied with it.

Little, Q.C. (for promoters): We insert in the bill the following clause: "In the construction of any of the tramways across the rails of any tramway belonging to the North Metropolitan tramway company, now laid upon the level of any road, the same shall be constructed and maintained in accordance with a plan to be agreed upon by the engineers for the time being of the said company and of the promoters, and under the superintendence and to the reasonable satisfaction of the engineer for the time being of the said company, at the cost of the promoters, unless after seven days' notice given by the promoters of their intention to commence such works such superintendence is refused or withheld, and such of the tramways as are laid upon the level across the rails of any tramway belonging to the said company shall be maintained and kept in constant and efficient repair to the reasonable satisfaction of the engineer for the time being of the said company. The promoters shall not stop or otherwise interfere with or obstruct the traffic upon the tramway of the said company at any such level crossing, and the promoters shall in respect of the traffic upon the tramways at such level crossing be subject to such rules, bye-laws, and regulations relating thereto as may be agreed upon between them and the said company. If by reason of the

execution of any of the works, or any proceedings of the promoters, or the failure of any such works, or any act or omission of the promoters or of their servants, any tramway or works of the said company be injured or damaged, such injury or damage shall be forthwith made good by the promoters at their own expense. In the event of any difference between the said company or their engineer, and the promoters and their engineer in relation to any matter under this section, the same shall be settled by a referee, to be appointed by the Board of Trade in the manner provided by section 33 of the Tramways Act, 1870, for the settlement of the differences in the said section mentioned." That is a strong clause, covering all the contingencies which can be foreseen. But if the petitioners had said that they merely wanted to go before the committee to make that clause stronger, we should not have objected to their right to do so. What they want is to prevent our coming at all. The streets are not their property; they have only the right to lay down their rails in the streets, simply because it is necessary that tram cars should run upon rails; but the tramway company have only an easement; they have only the right to run over the road in such a way as not to obstruct the general traffic. They are entitled to see that we do not damage their property, but they are not in the position of a railway company, or persons owning property in the ordinary sense. As to anything beyond that, they have no right to be heard on the ground of competition.

The CHAIRMAN: Do you contend that in no case has one tramway company a right to be heard against another on the ground of competition?

Little: Suppose a tramway company came for power to run side by side with another tramway along a public road; so long as they did not interfere with the physical working of that other tramway the existing tramway company would have no right to be heard; they would have no more right to be heard than a steamboat company plying on the Thames would have a right to be heard against the establishment of a line of competing steamboats, or than the General omnibus company would have a right to be heard against tramways.

Stephens: Omnibus companies have been allowed to be heard against tramway companies on the ground of competition. (*Liverpool Tramways*, 1 Clifford & Stephens, 120.)

Little: That was the very first case a long time ago. Nobody knew what tramways in large towns would be like then.

Stephens: There have been other cases since, even in London. In the *London Street Tram-*

ways Bill (2 Clifford & Stephens, 87) the London General omnibus company obtained a *locus standi*.

Little: Those were ordinary omnibuses, and the tramways were about to be constructed for the first time. These, on the contrary, will be rails laid down, for the most part, in streets where the petitioners' tramways do not run.

Mr. RICKARDS: In the report cited, the omnibus company raised no case of competition apparently.

Stephens: They got a general *locus standi* on the ground of interference with the streets, even without bringing in aid the ground of competition.

Little: We concede that these petitioners are entitled to protection in respect of interference, and we have given a very ample clause to protect them; but we say, as regards competition, that they have no right to be heard—first, because they run their tramways along other streets, and secondly, because the streets do not belong to them.

Mr. RICKARDS: In the *Liverpool* case a *locus standi* was given on the ground of competition?

Little: Partly, no doubt; but partly, or mainly, because the surface of the streets was to be altered to their prejudice.

Mr. RICKARDS: Have we had any case before us in which we have given a *locus standi* to one tramway company against another on the ground of competition?

Little: No. Tramway companies get a limited right of user of the streets over which they run, and they must take their chance of other tramways coming along the streets in a parallel direction. (*Lansdowne Road, &c., Tramways*, 2 Clifford & Rickards, 177.) Suppose that the public authority laid down a tramway, and then let somebody else work it, and the public authority came forward with a proposal to lay down another tramway in another street and to let it to somebody else, the lessee could have no *locus standi*. These petitioners have no more right to be heard than the lessee would in that case.

Stephens: In the *Lansdowne* case the map was against the petitioners, or they might have obtained a *locus* on the ground of competition.

Mr. RICKARDS: The tramway company are a body of persons in possession of a concession for which they have paid?

Little: Yes, that is all.

Mr. RICKARDS: Having that, are not they entitled to object to other parties coming for powers that would affect the enjoyment of that privilege, on the same principle that one railway company is allowed to be heard on the ground of competition against another?

Little: I contend that they are not; the primary outlay in the two cases is very different.

Mr. RICKARDS: They do not stand on the same footing in all respects, certainly, as a railway company, which possesses the land on which the rails are laid; but as parties who have obtained from Parliament a concession or privilege, upon the faith of which they have invested their money, the question is whether they do not stand on the same footing as a railway company?

Little: I contend that, in the interest of the public, it is unreasonable to allow persons, under those circumstances, to come in on the ground of competition. Here, it is true, for certain distances, and between certain points, the lines are parallel; but for the greater part of the course of the proposed tramway the traffic can scarcely be called competitive traffic. Each tramway would pick up its own passengers. As between the point near Islington and the point where St. James's-road is crossed, there may be competition, but throughout the whole of the rest of the line the two tramways run through entirely different thoroughfares; and the termini are different. As to our running parallel with them, the fact is, that they have a siding at Finsbury-park, which they use for spare cars when there is a crowd of people coming to Finsbury park; and we, in turning off out of Seven Sisters'-road, go within four feet of the end of their siding, and that they all running parallel with them.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is Allowed.

Agent for Petitioners (1) *Bradfield*.

Agents for Petitioners (2) *Sherwood & Co.*

Agent for Bill, *Bell*.

WREXHAM WATER BILL.

Petition of (1) ROGER ASSHETON RASBOTHAM; (2) C. F. O. DAVIS (FOR HIMSELF AND ELIZA FLINT) AND WILLIAM JOHNSON.

2nd June, 1880.—(Before Sir HARCOURT JOHNSTONE, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Water—Extension of Limits of Supply—Supply in Bulk beyond Limits—Service Reservoirs—Millowners, Rights of, Statutory and Prescriptive—Abstraction of Water—S. O. 14 [as to Notices, Owners of Streams, &c.]—Navigation—Conservancy Board—Waterworks Clauses Act, 1847.

The bill authorised an existing company to supply water within an extended area; to supply in bulk both within and without its limits; and to construct additional service reservoirs and filter beds. The petitioners were millowners on the river from which, and its tributaries, the company derived its water supply, and they contended that, although no power to take water other than what was already authorised by previous Acts was contained in the bill, it would involve a larger abstraction to supply the additional populations brought within the limits by the bill. The petitioners also asked to be heard against any injury arising out of the bill to the navigation of the river upon which their mills were situated. It was pointed out by the promoters that the bill contained no fresh powers to take water; that the petitioners, if injured, would be entitled to compensation under the Waterworks Clauses Act, 1847; and that, as regards injury to their mills from damage arising to the navigation of the river, the Conservancy board, who had the control over it, were the proper parties, if any, to be heard:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of (1) Roger Assheton Rasbotham was objected to, because (1) no water will, under the powers of the bill, be abstracted from the river Dee or from any of its tributaries; (2) the bill only seeks power to make additional works for the utilisation and storage of water; (3) it does not seek powers to take the water of any stream; (4) it in no way affects the petitioner's interest in the water of the river Dee or its tributaries; (5) the petitioner's mills are situated more than twenty miles from the promoters' present authorised source of supply; (6) the petitioner has no interests entitling him to be heard according to practice. The *locus standi* of (2) C. F. O. Davis (for himself and Eliza Flint) and William Johnson was objected to on identical grounds.

Pember, Q.C. (for petitioner (1)): The bill authorises the Wrexham waterworks company to make new reservoirs and filter beds, to further extend their limits of supply, and for other purposes. The promoters were empowered by their Act of 1864 to take water from one of the tribu-

taries of the river Dee, and to supply water to a district containing some 19,000 inhabitants. In 1874 they obtained powers to enlarge their works and their district of supply, and to take in an area containing 10,000 inhabitants. They now ask further to extend their works and their district, to supply an additional population of nearly 8,000, and to sell water in bulk without as well as within their limits of supply. Although, therefore, they do not expressly ask for powers to take more water from the river Dee, it is obvious that such will be the effect of the bill if it be passed, inasmuch as they must require more water to enable them to supply a larger area and population. The petitioner is the owner of corn mills on the river Dee, and the abstraction of a larger amount of water will injuriously affect him, both by diminishing his water power, and by reducing the water in the river below his mills, and thereby interfering with the navigation up to his mills. He is a grantee under an Act of Edward II., of the user of the water of the Dee. The only limit placed on the promoters' powers of taking water by their Act of 1864 is imposed by the limit affixed to their works, and to the area to be supplied by them. When, therefore, they ask to extend their works and their area, they do, in fact, ask for increased powers of taking water from the Dee, and to this the petitioner objects. Although not within the twenty miles limit prescribed by the S. O. for the purposes of notice, he is obviously injured by the bill, and injury, not distance, has been held to be the proper ground for a *locus standi*. (*Alliance Gas Bill*, 2 Clifford & Stephens, 178; *Smethurst*, Ed. 1876, 32; Ed. 1867, 24; 1 Clifford & Stephens, text, 24; *Weardale and Sheldon Water Bill* 1866, *Smethurst*, Ed. 1867, 103; *Maryport Improvement Bill* 1866, *Smethurst*, Ed. 1867, 105; *Bradford Waterworks Bill*, *Petition of Millowners*, 1 Clifford & Stephens, 1; *Bradford Waterworks Bill*, *Petition of Aire and Calder*, 1 Clifford & Stephens, 43; *Caledonian Additional Powers Bill*, 2 Clifford & Stephens, 28; *Wakefield Water Bill*, 1 Clifford & Rickards, 122.) The Shropshire canal company also take water from the Dee, at a spot more than thirty miles from the petitioner's mills, and they have always paid him compensation in respect of such abstraction.

Boydell, Parliamentary agent (for petitioners (2)): The petitioners are respectively part owners and beneficiary owners. This case is identical with that of petitioner (1), with the exception that we have never received a grant from the Crown, but we have a prescriptive right in the nature of an easement, as riparian and mill-owners, to the water of the Dee. The

same arguments and cases apply in our case as in that of petitioner (1).

Venables, Q.C. (for promoters): As regards the alleged injury to navigation, the proper parties to be heard, if any, are the Dee conservancy board. It is true that the Court has on several occasions said they would look at the injury rather than the distance, but no fresh injury can be done by the bill, and the cases cited can all be distinguished from the present. In all of them power was taken by the promoters over lands or streams. Although the bill increases the area of supply, it contains no additional powers to take the water, which is already our own under our Acts of 1864 and 1874. Here we are only seeking power to utilise what we are already authorised to take, as is shown by the works proposed, which are only service reservoirs and filter beds. Our Act of 1864 incorporates the Waterworks Clauses Act, 1847, and the petitioners would still have a remedy under sec. 6 of that Act, which the bill does not interfere with.

The CHAIRMAN: The *locus standi* of Petitioners (1) and (2) is *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioner (1), *Martin & Leslie.*

Agent for Petitioners (2), *Boydell.*

WOOLWICH AND PLUMSTEAD TRAMWAYS ORDER BILL.

Petition of FRONTAGERS AND OTHERS.

June 23rd, 1880.—(Before Mr. PARKER, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramway on Bridge Crossing Railway Line—Railway Company as Frontagers—Railway Premises Within S. O. as to Tramways—Tramway Traversing Street giving Side Access to Railway Station—Frontagers as a Class—Estimated Outlay on Tramway, Allegations as to—Cab Proprietors Opposing Tramway on Ground of Competition—Omnibuses and Cabs, Distinction between as to Tramway Competition—Practice—Signatures to Petition not bona fide.

Cab proprietors, even when they petition as a class, are not entitled to be heard against tramways on the ground of competition. Such competition is assumed in the case of omnibuses plying between the points to be served by a proposed tramway; but

(*Per Cur.*) "No one can say whether the effect of constructing a tramway may not be to increase the demand for cabs, just as the development of railways has led to an increased demand for horses."

A railway company sought to be heard against a tramway bill (1) as owners, because the proposed line would cross a bridge belonging to the petitioners, and built by them over their line at Plumstead; and (2) as frontagers under the S. O. It appeared (1) that there was no allegation in the petition that the bridge was the property of the railway company, or that they would be injuriously affected if it were crossed by the tramway, though the petition did allege that the approach to the bridge was ill-adapted to the laying of a tramway there, and that the petitioners "strongly object" to it. It further appeared (2) that the tramway would run, not in front of the railway station as was alleged in the petition, but along a street from which steps led to the petitioners' down platform:

Held, upon these facts, that the petitioners had no *locus standi* as owners in respect of the bridge, but, as frontagers, were entitled to be heard under the S. O., their rights as such not being impaired by the fact that the tramway traversed a side street giving partial access to their premises and did not pass in front of their station.

It was objected by promoters that the petition against the bill had not really been signed by two persons whose names were attached thereto. The counsel for petitioners replied that, in accordance with a reported case, the court would not go outside the petition to enquire whether the signatures were genuine, this being a question for the House itself; and thereupon the promoters withdrew their objection.

The *locus standi* of frontagers and others was objected to, because (1) no land, property, rights, or interests of the petitioners will or can be taken or interfered with by the powers contained in the bill or Provisional Order; (2) it is admitted that some only of the petitioners are owners, lessees, or occupiers of houses, shops, or warehouses in the streets through which the proposed

tramways are intended to be laid—as to such as are not owners or occupiers of houses, shops, or warehouses in any such street, they are not entitled, according to the practice of Parliament, to be heard against the bill; (3) not any of the following petitioners [*named*] are owners or occupiers of any shop, house, or warehouse in any street through which it is proposed under the Provisional Order to construct any tramway; (4) the petitioner, Samuel Marshall, is not, and was not at the time of signing the petition, the owner, lessee, or occupier of 87, Plumstead-road; (5) Samuel Kiddle and E. Page respectively, whose names appear at the foot of the petition, did not sign the same; (6) as regards such of the petitioners as are *bonâ fide* frontagers on, or owners or occupiers of any houses, shops, or warehouses in any street along which any of such tramways is intended to be laid, they are only entitled to be heard in the manner and within the limits prescribed by Commons S. O. 185, and not further, or otherwise, or generally against the bill; (7) as regards the petitioners, the South-Eastern railway company, (a) they are not entitled to be heard against the Provisional Order and the confirmation thereof, on the ground of competition; (b) they do not claim to be owners of the bridge referred to in their petition, nor do they allege or complain of any apprehended injury to such bridge, and they are not the owners, nor do they have the control of the approaches to such bridge, and therefore are not entitled to be heard on that ground; (c) it is not the fact, as alleged, that the proposed tramways will be laid in front of the company's station at Plumstead; (d) the petition discloses no ground which entitles the company to be heard against the bill; (8) the total number of persons who have signed the petition, if all of them were entitled to be heard as frontagers, or in any other capacity, is inadequate to enable them to be heard against the bill as representing the resident owners of property, or other interests in the districts, or any of them in which the tramways are proposed to be laid; (9) the petitioners, not being the local or road authority, or representing the inhabitants or owners of property in the district affected by the proposed order, or the public, are not entitled to be heard in respect of the matters alleged or complained of in paragraphs 9, 10, 12, 13, and 15 of the petition, or to enter into any question of public expediency, or of injury to the property in the district raised in their petition; (10) the promoters having complied with the rules and requirements of the Board of Trade as to the estimate of expenses of the proposed tramways, and the deposit of 5 per cent. on the amount of such estimate and

other matters preliminary to the introduction of the said bill into Parliament, it is not competent for the petitioners to enquire into those matters, or as to what means exist for the execution of the proposed tramways; (11) the petitioners are not entitled upon any grounds stated in their petition, nor have they any such interest in the subject-matter of the bill or Provisional Order as entitles them to be heard against the same, except to the extent and as limited as aforesaid.

Ledgard (for promoters): The petitioners consist of four classes:—Persons claiming as frontagers; an omnibus proprietor, who does not claim to be a frontager; cab proprietors, who also do not claim to be frontagers; and the South-Eastern railway company. I concede a *locus standi* to the omnibus proprietor, on the ground of competition; I object to the *locus standi* of the cab proprietors; I object to some of the frontagers; and I object to the South-Eastern railway company.

Worsley (for petitioners): Ten of the petitioners are cab proprietors, one of them, Mr. Tilling, having no less than 1,400 horses; and they may be taken as being nine-tenths of all the cab proprietors in the district. I submit that they have a right to be heard on the same ground as omnibus proprietors are allowed a *locus standi* against tramways.

Mr. RICKARDS: Omnibus proprietors are heard against tramways, on the ground that they will be competed with by the proposed tramway.

Worsley: The cab proprietors here carry on their business along the road on which the tramways will be laid, though they also carry it on along other roads. This tramway is proposed to be laid down from the South-Eastern railway, along the High-street. The majority of the cabs would stand at that station, and would drive along that road.

Mr. RICKARDS: We have never gone so far as to give a *locus standi* to cab proprietors.

Worsley: These cab-owners are of a class having interests distinct from the inhabitants, or from public bodies, or from frontagers. Traders or freighters who can make out a *prima facie* case, showing that they will be injured in their business, are allowed a *locus standi* if they petition as a class.

Mr. RICKARDS: That rule applies to traders or freighters using a particular line of railway. We should be going further than we have ever gone before, if we allowed cab proprietors to be heard against a railway or a tramway. Hotel-keepers might as well claim to be heard against railways on the ground that they affected their business.

Worsley: We get our living by plying along this very road (among others) upon which the

tramway is to be laid. That is a different case to the case of hotel proprietors.

Mr. RICKARDS: No one can say whether the effect of the construction of a tramway may not be to increase the demand for cabs, just as the development of railways has led to an increased demand for horses.

Worsley: This tramway passes the doors of the railway station, and goes along the principal street. No doubt it must reduce the demand for cabs.

The CHAIRMAN: We need not trouble Mr. Ledgard to argue the question of the *locus standi* of those of the petitioners who are cab-owners.

Locus standi of petitioning cab-owners, Disallowed.

Ledgard: As regards the frontagers, the first six named in the objections I do not object to, but I am informed that Page and Kiddle have not signed the petition.

Worsley: That is not a matter which this Court will inquire into. That is a matter for Parliament to deal with hereafter.

Mr. RICKARDS: We cannot give a *locus standi* to a man who has not petitioned the House.

Worsley: His name is attached to the petition. The only question is, whether he did in fact sign it. In the case of the *Tramways Provisional Order (London-street Tramways Bill)* (1 Clifford & Rickards, 120), you decided that you would not go behind the petition.

Ledgard: I will not contest that point.

Worsley: Then as to the South-Eastern company, we admit that we are not entitled to be heard on the ground of competition, but we claim to be heard as frontagers, and also in respect of the tramway being proposed to be laid down on a bridge which crosses our railway. Our railway at Plumstead passes under the Plumstead-road, which is carried over the railway by means of a bridge. The petition alleges that "the approach to this bridge from the Plumstead side is very steep and narrow, and on a curve, and altogether extremely ill-adapted for the laying down of a line of tramway thereon. Your petitioners strongly object to the laying down of a tramway on that road." We are also the owners and occupiers of Plumstead station, in front of which the proposed tramways are intended to be laid, and those tramways would interfere with the access to our station, and so injuriously affect us in the use and enjoyment of our premises, and in the conduct of the traffic to and from those premises. With respect to the bridge, we submit that we are as much entitled to be heard as a railway company would be entitled to be heard when another railway company proposed to carry a bridge over their railway.

Mr. RICKARDS: You do not allege that the bridge is yours?

Worsley: No; but it is a bridge which we have constructed over the railway on the demand of the local authorities, in order to get rid of a level crossing.

Mr. RICKARDS: You do not seem to allege that you will be injuriously interfered with by the tramway being carried along that bridge?

Worsley: I admit that there is no such allegation; but S. O. 13 appears to recognise the right of a railway company to be heard in respect of such an interference, inasmuch as it requires notice to be served in such a case. Then we say we are frontagers.

Ledgard: That we dispute.

Worsley: Then I must call a witness.

[Mr. Francis Brady, the engineer of the South-Eastern railway company, was examined. It appeared from the plan produced, and from the evidence of this witness, that the tramways would be laid not along the road in front of the station, but along the road at the top of some footsteps leading to the down platform. The over bridge (the witness continued), which the tramway will pass along, is the company's bridge. There used to be a level crossing, and the company substituted the bridge for it at the instigation of the local authorities. The bridge was the property of the company. There was no access to the down platform for carriages; but passengers could drive up to the front station, along the road upon which the tramways are going to be laid. The tramway would not pass in front of that front entrance.]

Ledgard (to witness): What is the width of the road at the point where the tramway passes on the road which is the carriage access to your station?

Worsley: We are not required to prove that the tramway will injuriously affect us. All that we need do is to prove that we are in the street, and allege that it will injuriously affect us.

Ledgard: We do not go in front of your front station.

Worsley: We come within the S. O.

Ledgard: A railway is not a shop or warehouse.

Mr. RICKARDS: We have held that railway premises forming part of a station, must be taken to be within the meaning of this S. O.

Ledgard (in reply): As regards the railway company, they clearly are to be limited if admitted at all. The company say: "your petitioners, the South-Eastern railway company, are also the owners and occupiers of Plumstead station, in front of which the proposed tramways are intended to be laid, and submit that those tramways, if so laid" (that is to say, laid

in front of the station), "would interfere with the access to that station." The witness admitted that no vehicles go to the station, except along the road to the main front station, and what this paragraph of the petition really complains of is, that the tramways will be laid along the road, along which the traffic to the front station comes; though it is not really laid along that part of the road immediately in front of the station. It turns out that the foot-steps to the down platform are available only for foot-passengers, which footsteps meet the road along which the tramway will run, but it is evident that that is not what is pointed at by the allegation, which is, that the tramway, if laid in front of their main entrance, would interfere with the access to that station, and so injuriously affect the company "in the use or enjoyment of those premises, and in the conduct of their traffic to and from those premises."

Worsley: We also come under the general allegation, "the majority of your petitioners are owners, lessees, or occupiers of houses, shops, and warehouses, in streets along which the tramway proposes to be authorised by the Order are intended to be laid."

Ledgard: The South-Eastern do not front upon the road along which the tramway is laid. They have no access immediately abutting on that road except for foot passengers; in fact, we do not go in front of their premises, we go at the back of them; and the laying of a tramway along the road with which the foot-steps communicate is not an interference with them in the enjoyment of their trade, for foot-passengers could as easily walk down to the foot-steps to the platform after the tramway was laid as they can now. It is obvious that we cannot interfere with the vehicular access to their station.

Worsley: As regards our station, it is sufficient that we are in the street along which the tramway is to be laid, though it is not laid in front of our station.

The CHAIRMAN: We give a *locus standi* to as many of the Petitioners as are owners and occupiers of houses in a street or road through which it is proposed to construct the tramway, under S. O. 135. Then the *locus standi* of John Munyard, the omnibus proprietor, is *Allowed* generally; and the *locus standi* of the South-Eastern Railway Company is *Allowed* under S. O. 135.

Agents for Bill, *Durnford & Co.*

Agents for Petitioners, *Hanly & Carlisle.*

YARMOUTH UNION RAILWAY BILL

Petition of GREAT EASTERN RAILWAY COMPANY.

31st May, 1880.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HARCOURT JOHNSTONE, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramway—S. O. (Frontagers to Tramways)—Railway Company as Frontagers—"Premises," Construction of, in S. O.—"Frontager," not used in S. O.—Private Road leading to Roadway of Tram—Interference with Railway Traffic by Tramway, extent of—Injury, not Distance from Tramway, Test of Claim—Practice—Petition, Claim to insert Further Particulars in.

A railway company sought to be heard against a tramway bill, on the ground that the proposed line would interfere with the traffic to and from their station. The railway station was situated more than 100 yards from the main road to be traversed by the tramway, and on the opposite bank of a stream, the bridge over which, and the approach way leading to the main road, belonged to the railway company. The latter therefore alleged that they were frontagers, and came within the S. O. as persons who would be injuriously affected "in the use and enjoyment of their premises or in the conduct of their trade or business." In argument, reliance was also placed on an injurious affecting of a coal depot and cottages belonging to the railway company, and situated upon the line of tramway, but there were no allegations to this effect in the petition, and the Court did not grant the request that the petitioners should be allowed to add further particulars:

Held, as to the claim raised by the railway company, by reason of their approach road, that, without over-ruling a cited case in which they were admitted as frontagers in respect of an approach road, their *locus standi* in the particular case must be disallowed.

The *locus standi* of the Great Eastern railway company was objected to, because (1) the proposed railway and tramway will not communicate with their railway or cross over or under

the same, and there are no provisions in the bill for taking or using any part of their lands, railways, stations, or accommodations, or for running engines or carriages upon or across the same, or for granting other facilities against the petitioners; (2 and 3) the petitioners are not owners, lessees, or occupiers of any lands over which compulsory powers are sought by the bill; (4) they are not frontagers upon any road proposed to be traversed by the tramway, nor are they owners of any of the approaches to the road; (5) they have not any such interest in or control over the road referred to in the petition as entitles them to be heard in respect of the alleged interference therewith, the said road being a public road, and the road authority only being entitled to be heard in respect thereof; (6) the petition does not allege or disclose any ground upon which, according to practice, the petitioners are entitled to be heard.

Pember, Q.C. (for the Great Eastern railway company): The tramway proposed by the bill runs along a road into which the approach road to our Yarmouth (Vauxhall) station runs. The approach road does not come down absolutely at right angles to the road, but impinges on it at an acute angle. We are owners of the approach road and of the bridge over the river Yare leading thereto; and we say that this tramway will block up the approach road to our station, will obstruct the traffic thereto, and will be a source of great inconvenience, and even of danger, to the passengers using our station. Though the tramway at the part of the public road into which our approach road runs may be 100 yards or more from our station, we are frontagers on the public road, just as we were held to be frontagers in the case of the *Norwich Tramways Bill* last year (2 Clifford & Rickards, 210). In the following cases also the Court held that a private road connecting a station with the road to be traversed by the tramways is "premises" within the meaning of the S. O.:—*Dublin Tramways Bill* (2 Clifford & Stephens, 143); *North Metropolitan Tramways Bill* (*Ib.* 89); *Kings Cross and City Tramways Bill* (2 Clifford & Rickards, 106). Besides being frontagers in respect of that approach road, we are owners of a coal depôt, and shed and offices in the occupation of a coal merchant, and of two cottages occupied by servants of the company, abutting upon the road along which the tramway will run.

Mr. RICKARDS: It appears, on looking at the map, that your station is on one side of the river, and the tramway will run on the other?

Pember: Yes; but the bridge over the river is our bridge, and the approach road is our road.

Mr. RICKARDS: To what extent do you say

you will be obstructed by the making of this tramway? You call yourselves frontagers and therefore it is rather important that we should see *prima facie* where you will be interfered with.

Pember: That is a question of merits, as it was in the *Norwich Tramways* case. The making and working of the tramway will obstruct me in my business, but the extent of the obstruction is a matter for the Committee. Any access to my premises, whether by an avenue or an approach road, is part of my "premises," for I cannot go to my house without it; and for the purposes of the S. O. my house is situate in the street; it abuts upon the street.

The CHAIRMAN: Surely, much must always depend upon the distance of the station or premises from the road along which the tramway is proposed to be laid?

Pember: In the *Dublin* case, the distance was 800 yards. This is a terminal station. We do not bring it down to the main road, because that would involve the purchase of expensive property. We make an approach road to that main road; and an obstruction to the traffic on that main road, though it may occur 600 yards off our station, is just as much an obstruction as if it took place six yards off.

The CHAIRMAN: I doubt whether, when the S. O. was framed, it had reference to the obstruction of a road a mile off a railway station.

Pember: Even in the case of an ordinary householder, he is not bound to show an obstruction in front of his house. It is sufficient if his house is in the same street as that to be traversed by the tramway. Here the obstruction will be at the end of my premises, regarding the approach road as my premises.

Batten (for promoters): The question whether persons are or are not entitled to a *locus standi* as frontagers, is a question of degree. If a tramway were proposed along the Strand, in front of the Charing Cross station, the South-Eastern railway company would no doubt have the right to be heard; but if a railway company choose for the sake of economy, to plant their station in the outskirts of a town, they are not frontagers on a road at some distance from the station, and to which that station does not front.

Mr. RICKARDS: The word "frontager" is not in the S. O. Is not the practical question this—not so much the distance at which the petitioner's premises may be from the road, but whether the petitioner may be injuriously affected in the conduct of his business by the laying down of the tramway along the road?

Batten: Under the S. O., a railway company is in no better position than a large warehouse, or a public-house, or even a small shop. If you

give the petitioners a *locus standi* in this case, where a river intervenes between the station and the main road, and where there is a long road leading from the main road to the station, you will open a wide door to *locus standi* against tramways. Here the railway station does not *bona fide* front the main road, though it is true that an approach road has to be made into that main road, which approach road has been taken over by the public authorities.

Pember : That is not so, though it is true that along part of the roadway the public authorities repair the road.

Batten : If they are frontagers upon anything, the petitioners are frontagers upon the river. You cannot be frontagers on both sides of a river, unless you have property on both sides of the river. If a proposal were made to carry a tramway along the Marylebone-road, I admit that the London and North-Western company might have a right to be heard as frontagers.

Pember : That is my case.

Batten : No. With respect to the ownership of the coal depôt and cottages, there is no allegation in the petition ; and the occupiers do not allege injury.

Pember : The Court would allow us to add that allegation to our petition, if necessary, as was done in the *North Metropolitan* case.

Mr. RICKARDS : Is the coal depôt part of the business premises of the Great Eastern company ?

Batten : No.

Pember : Yes it is, and the landlord's interest is to be considered as much as the tenant's.

Batten : According to the S. O., a person who claims the right to be heard as a frontager must not only be a frontager "in a street through which it is proposed to construct a tramway," but he must allege "that the construction or use of the tramway" "will injuriously affect him in the use or enjoyment of his business, or in the conduct of his trade or business." No such allegation is made in this petition about the coal depôt.

Pember : We were allowed to furnish additional particulars in the *North Metropolitan* case ; and that could be done here.

Mr. RICKARDS : The question is, whether this coal depôt is part of the station premises ?

Batten : It is simply an open coal yard in which the occupier stores coals, brought either by rail or river ; and the occupier does not complain that his trade will be interfered with.

The CHAIRMAN : We need not trouble you further. Of course each case depends on its own merits. We do not over-rule the *Norwich Tramways* case, but we think in this case the *locus standi* must be disallowed. The question of the coal depôt is not raised at all by the petition. There must be an allegation of the injurious affecting of the trade of the petitioners, and obviously, on the face of the petition, it is only the injury to the trade of the railway that is contemplated.

Locus standi Disallowed.

Agent for Petitioners, *Curwood*.

Agents for Bill, *Cruss & Clay*.

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